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THE

ROMAN

Military Punishments.

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THE

ROMAN

Military Punishments.

BY

JOHN BEAVER, Esq;

Terrent nisi timent. Lipsi. de M. R.



LONDON,

FROM THE HAPPY REVOLUTION

ANNO XXXVII.

(1725)



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TO THE READER.

YOU have here the Firſt expreſs Treatiſe of the *Roman Military Puniſhments*, that, perhaps, you ever ſaw, or heard of, in the *Engliſh* Tongue. A Subject, it muſt be confeſt, of more Curioſity than Uſe; yet ſuch as hath often employ'd the Pens of ſeveral Great and Learned Men, to whom, I freely own my ſelf indebted for the

the Thought of the undertaking, as well as for many Materials towards accompliſhing this Deſign : And I hope, it will be no Diſparagement to the Work, ſince that would be altogether as unreaſonable, as to leſſen the Merit of an *Architect*, becauſe he is not the *Inventer* of the *Timber* and *Stone* out of which he is to raiſe his Building ; there will be ſomething due to him for his Model and Contrivance, and for his Pains and Application, in finding out, and bringing together proper Materials for the Structure.

The Nature of the Employment in which I have the Honour to ſerve His *Majeſty*, neceſſarily engag'd me to be acquainted with this Subject. And tho'

the

the *Modern* Puniſhments uſed in Armies fell more immediately under my Conſideration, after I had finiſh'd my Enquiries and Obſervations upon them, the Work ſeem'd imperfect, till I had look'd back into *Antiquity*, and ſeen what Puniſhments were in uſe in thoſe remote Times, when *Military Diſcipline* is thought to have been in the higheſt Degree of Perfection. This regularly divided my Book into Two Parts; One treating of the *Roman*, the other of the *Modern Military Puniſhments*. The Firſt I now ſend into the World, as a Man going into the Water, dips his Foot to feel what Reception he is like to meet with; by that Rule, reſolving, either to publiſh the Second Part, or ſit down contented with the

private

private Satisfaction of having by my Studies, rendred my ſelf more able, worthily to diſcharge the Duties of my Office.

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ERRATA:

ERRATA.

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Alexander ab Alexandro.
Amm. Marcellinus.
Appianus.
Budæus.
Caſaubonus,
Choulius.
Cicero.
Codex Theodoſianus.
Cod. Juſtinian.
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Spartianus.
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Vegetius.
Virgilius.
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CHAP. I.

AS Military Crimes are either *common to all Men, or *proper* to ſuch as embrace that Profeſſion; ſo are Military Puniſhments. Not that the Peaſant and Soldier falling into the

* Militum delicta ſive admiſſa, aut propria ſunt, aut cum cæteris communia, unde & perſecutio aut propria aut communis eſt. Proprium militare eſt delictum, quod quis uti Miles admittit. *Digeſt. lib.* 49. *Tit.* 16. *De Re Militari, Leg.* 2.

ſame Crime ſuffer alike: For the Soldier is generally corrected * with greater Rigour and Severity; as well becauſe he is under a double Tie of Duty to the Government, whoſe Bread he eats, and in whoſe Defence he has ſolemnly engag'd, as that by the leaſt Omiſſion or Miſtake, he may bring the whole Army, and conſequently the Government into Danger of utter Ruin. † There is no Pardon, ſays *Vegetius*, for a Neglect, where the Safety of the State is in queſtion. To which may be added, as another Reaſon for the Se-

* Rigidiùs autem Milites quàm alii plerunque puniuntur, tum quòd arctiori vinculo ad obedientiam illi ſunt obligati, qui publicis aluntur ſtipendiis, tum quòd iis ferocior ut plurimùm natura. Vid. *Johannis Voet. lib. ſing. De Jure Militari, cap.* 4. §. 5.

† Siquidem nulla ſit negligentiæ venia, ubi de ſalute certatur. *Veget. lib.* 3. *cap.* 5.

verity

verity of Military Discipline, the common, and, I doubt, too true Observation, * that Soldiers are apt to assume a greater Liberty of Offending than others; as if entring into the Army let them loose from all Bonds of Human Society.

The *Roman* Military Punishments were either prescrib'd by express Laws; or Arbitrary, and depended entirely upon the Pleasure of the General, or Person that commanded the Army.

Among these, some were *Capital*, and reach'd either the † *Natural* or *Civil Life* of the Offender; others *not Capital*, as tending only to his *Reformation*.

* *Turner's Pallas Armata*, Book 2. Chap. 24.

† Intereunt autem homines vel maxima vel media, capitis diminutione, aut morte. *Digest. lib.* 17. *Tit.* 2. *Pro Socio. Leg.* 63. §. *ult.*

Of Capital Military Puniſhments, the Chief was *Verberatio, Beating*. This was of Two Kinds; One call'd *Fuſtigatio*, the Other *Caſtigatio*; the difference between them conſiſting in this, that the firſt was ever inflicted with *Sticks* and *Cudgels*, and generally ended in an ignominious Death; the latter, with *Rods* or *Scourges*, being a Puniſhment of *Pain* and *Infamy*, but never extended to *Life* or *Limb*: Of which, more in another Place.

The *Fuſtigatio*, or, as it is by ſome call'd *Fuſtuarium*, was peculiar to * Freemen, as the *Flagra* and *Flagella* were to Slaves; and therefore the *Roman* Poets and Hiſtorians call them *Servilia*

* Non omnes *fuſtibus* cædi ſolent, ſed hi duntaxat, qui *Liberi* ſunt. *Digeſt. lib.* 48. *Tit.* 19. *De Pœnis. Leg.* 28. §. 2.
Ex quibus cauſis *Liber fuſtibus* cæditur, ex his *Servus flagellis* cædi. *Eodem, Leg.* 10.
Juſtino 1. 5. *Petron.* p. 88.

Verbera,

Verbera, Serviles Pœnæ; And *Juvenal* uses this Expression, *Ad flagra deducere*, to signifie the bringing a Man to the Condition of a Slave. It is therefore difficult to assign a Reason, why several Learned Men, particularly † *Gothofredus* and ‡ *Stewechius*, have, upon the Authority of * *Suidas* and *Eutropius*, ascribed the Introduction of the *Fustuarium* among the *Romans* to *Tarquin the Proud*, especially since the Lexicographer in enumerating the Punishments of which *Tarquin* was the Author, makes no mention of the *Fustes*, but only μάστιγας, the *Flagella*; which was so different a Punishment from the *Fustuarium*, that it was never inflicted upon Freemen; unless we can suppose they

† *Ad Leg.* 7. *Digest. de Pœnis.* ‡ *Ad Veget. lib.* 1. *cap.*26.
* *Vide Suidam in vcce* Ξύλα. *Juven. Sat.* 10. *V.* 109. & *Eutropium, lib.* 11.

did not perfectly underſtand the *Greek* Word, or knew not how to diſtinguiſh between the *Fuſtes* and *Flagella*, in the Puniſhment of the *Fuſtuarium*. Beſides, there is not one Word of the *Fuſtes*, or of *Tarquin*'s introducing them, in the Place cited out of *Eutropius*. They might, no doubt, have produc'd an Author more to their purpoſe: For * *Iſidorus* ſays, beſides *Goals*, *Racks*, *working* in the *Mines*, and *Baniſhment*, *Tarquin* invented the Puniſhment of the *Fuſtes*, he means, amongſt the *Romans*; for, no queſtion, the Puniſhing with *Clubs* and *Staves* was long before practis'd by other Nations, who made uſe of them in War before the Art of working Iron was known; and hence, even after Iron became common, *Clubs* and *Staves* conti-

* *Lib.* 5. *c.* 27.

nu'd

nu'd to be used in certain Punishments.

They likewise made a Distinction between the *Fustigatio* or *Fustuarium*, and * *Fustium admonitio*; the first being proper to Soldiers, and, as is before observed, *Capital*; the latter a *Corporal* Punishment common to Soldier and Peasant, and inflicted only to warn them from committing the same Fault again: From whence it was called κατ' ἐξοχὴν *Animadversio*; whereas such as underwent the *Fustuarium*, were generally beaten to death; and tho' sometimes it hapned they escap'd with Life out of the Camp, yet it was of little Advantage to them, the † Laws

* Veluti fustium admonitio. *Digest. lib.* 48. *Tit.* 19. *De Pœnis, Leg.* 7.

† Ac si qui evasissent, nec siquidem servari poterant, quippe, quibus neque in Patriam redire liceret, neque à propinquis domum recipi possent. *Polyb. lib.* 6. *cap.* 35.

forbidding

forbidding their Return home, or their Friends or Relations to receive or aſſiſt them ; ‡ ſo that it ended, at the beſt, in a kind of perpetual Baniſhment. It is therefore ſurprizing, that * *Lyndenbrogius* ſhould compare the *Fuſtigatio* of the Antients to our running the † *Gatloupe* ; ſince in his Deſcription of the *Fuſtuarium*, he ſays, Every one in the Camp, what with Staves, Swords or Stones, help'd to diſpatch the miſerable Offender : Which is known to be quite otherwiſe in our Modern Puniſhment.

‡ Quamobrem qui ſemel in eam calamitatem inciderunt, planiſſimè pereunt. *Polyb loc. cit.*

* *Lyndenbrogius ad Ammianum, Lib. 29. cap. 5. Edit. Gronov. p. 623.* Durch die Spieſſe lauffen.

† From Gas or Gat, which ſignifies a *Street* or *Way*, and Laufen or Loupen to *Run*.

levior,

It is also apparent from its ending in Death, that not *this*, but the *former* is that Species of the *Fustigatio*, which by the Learned is said to be *Flagellatione levior*, lighter than *Whipping*. On the other hand, Whipping was far more grievous than their *Admonitio*, as being inflicted on the bare Back of the Offender: Whence ‡ *Juvenal*,

----- *Rubet ille flagello;*

Whereas such as were beaten with the *Fustes* for *Correction* or *Amendment*, had generally their Cloaths on, tho' sometimes they were stripp'd * naked; and if the Fault was of a nature that deserv'd it, they were mark'd with † *Infamy*.

‡ *Sat. 6. V.* 48.

* *Vestimentis quoque detractis. Gell. lib.* 10. *cap.* 3.

L. 22. *Dig. De his qui notantur infamia.*

† Ictus fustium infamiam non importat, sed Causa, propter quam id pati meruit, si ea fuit quæ infamiam damnato irrogat. *Dig. lib.* 3. *Tit. De his qui notantur infamia. Leg.* 22.

And it is to be obſerv'd, that the *Fuſtuarium* was never given by the hands of the *Common Executioner*, who was as infamous in thoſe Days, as at preſent; and by the * *Cenſorian Laws* not allow'd to dwell in the City. But the † *Tribune* or Colonel having firſt touch'd the Criminal with his *Baton* or Stick, he was thereupon deliver'd up to the Soldiers, and commonly, before he could run through the Camp, put to death. This *Lipſius* exclaims at as a Piece of Inhumanity; becauſe the Offender was executed by his *Comrades*; as if it were not more honourable to die by

* Cenſoriis Legibus non Foro modò, ſed & urbis domicilio excluſi fuerint carnifices. *Sichtermanni Diſſert. De Pœnis Milit. cap.* 2.

† Accepto Fuſte Tribunus, vix tantùm attingebat damnatum, quod ubi factum erat omnes qui in caſtris erant cædentes fuſtibus lapidibuſque pleroſque in ipſis caſtris conficiebant. *Polyb. lib.* 6. *cap.* 35.

their

their Hands, than those of the Common Hangman. Both the *Antients* and *Moderns* have ever esteem'd some sorts of Punishments more *Infamous* than others ; which Opinion is grounded upon the Circumstances that attend them, especially, the *Hand* employ'd in the Execution ; and therefore, when *Æneas* had given *Lausus* his Mortal Wound, he comforted his dying Enemy with these Words :

Hoc tamen infelix miseram solabere mortem
Æneæ magni dextrâ cadis.

[Virg. Æn. lib. 10. V. 829.

This Comfort have in thy sad Funeral,
That thou by Great Æneas *Hand didst fall.*

In succeeding Ages *Swords* were made use of in the place of *Sticks* or *Cudgels*, in much the same kind of Punishment,

as it is deſcrib'd by ‖ *Tacitus*; and *Polybius* ſays, they uſed *Stones* on theſe Occaſions; Which ſeems to have led *Stewechius* into the Miſtake, that *Stoning* was a diſtinct *Roman* Military Puniſhment; but the Authority he goes upon is call'd in queſtion by * *Sichterman* and ‡ Sir *Charles Turner*, who think the Inſtances of ſtoning to Death, which we meet with in the † *Roman* Armies, are to be imputed to the Violence of ſeditious Perſons, and no Argument to prove it was a regular Military Puniſhment.

‖ Stabant pro concione Legiones diſtrictis *gladiis*, Reus in ſuggeſtu per Tribunum oſtendebatur, ſi nocentem adclamaverant, præceps datus trucidabatur. *Tacit. Annal.* 1. *cap.* 44. *Edit. Amſtel.* 1701.

* *Diſſert. De Pœnis Milit. cap.* 2.

‡ *Pallas Armata*, Chap. 23.

† Exercitus Poſthumium Imperatorem inficiantem quas promiſerat prædas facta in caſtris ſeditione lapidavit. *Florus, lib.* 1. *c.* 22. *Liv. lib.* 4.

Valens coercere ſeditionem cæptabat, ipſum invadunt ſaxa jaciunt. *Tacit. Hiſt. lib.* 2. *cap.* 29.

CHAP.

CHAP. II.

THE Crimes punish'd by the *Fustuarium*, were * *Negligence* in *going the Rounds*, *Sleeping on the Watch*, *Theft*, Bearing *False Witness*, *Sodomy*, and all other Faults, of which any Man had been *thrice* convicted.

The Consequence of not performing the Duty of a Centinel or Watch with the utmost Care and Alertness, is too obvious to want any Enlargement on that Subject. The whole *Carthaginian*

* Si nihil tale factum redit in circitorem culpa, statimque advocato consilio, à *Tribuno* causa cognoscitur, & si damnatus fuerit *Fustuarium* subit. *Just. Lips. in Polyb. lib.* 5. *De Milit. Roman. Dial.* 18.

Fuste autem percutitur & is qui furto aliquid abstulit è castris, & qui falsum testimonium dixit, & qui flore ætatis corpore suo deprehenditur abusus. Itemque qui *ter* ob eandem culpam mulctatus fuerit. *Lips. in Polyb. lib.* 5. *De Milit. Rom. Dial.* 18.

Army

Army in *Spain* was ſurpriz'd and routed by a Handful of Men, under the Command of *L. Marcius*, and the *Capitol* it ſelf narrowly eſcaped being ſeiz'd by the *Gauls*, for want of Vigilance in the Out-Guards, that were placed to ſecure, and give the Alarm to thoſe within. * *Polybius* has written copiouſly upon the excellent Method uſed by the *Romans* in going the Rounds, giving the *Word*, and ſetting the Watch. The Reader may alſo conſult † *Voet De Jure Militari*; wherein he will find many Examples of the Severity of the Antients upon Offenders againſt this Branch of Military Diſcipline.

* *Polyb. liq.* 6.

† *Voet. cap.* 4. *n.* 25.

Nor

Nor were the *Romans* less careful in providing for the Security and Preservation of every Man's Property within the Camp. To this end, *Theft* was punish'd with the utmost rigour, not only as a Crime destructive of Society, but as a Sin against Religion; every one belonging to the Army, upon his first Encamping, being obliged to take the * *Sacramentum Castrense*, or *Camp-Oath*;

* IN EXERCITU DECEMQUE MILLIA PASSUUM PROPE *FURTUM* NON FACIES DOLO MALO SOLUS, NEQUE CUM PLURIBUS PLURIS NUMMI ARGENTEI IN DIES SINGULOS. EXTRAQUE HASTAM, HASTILE, LIGNA, PABULUM, UTREM, FOLLEM, FACULAM, SI QUID IBI INVENERIS QUOD PLURIS NUMMI ARGENTEI ERIT, UTI TU AD COSS. SIVE AD QUEM EORUM ALTER JUSSERIT PERFERAS, AUT PROFITEBERE IN TRIDUO PROXIMO QUICQUID INVENERIS SUSTULERISVE DOLO MALO AUT DOMINO SUO CUJUM ID CENSEBIS ESSE REDDES UTI QUOD RECTE FACTUM ESSE VOLES. *Aul. Gell. Noctes Atticæ, lib.* 16. *cap.* 4.

See the Notes of R. H. Schelius *upon this* Oath, *and* Grævius's Thesaur. *Tom.* x. *p.* 1177. *& seqq.*

the

the Purport of which was, *That he ſhould not* ſteal *or* pilfer *in or about the* Camp; *and if he happen'd to find any thing, he was within Three Days to carry it to the* General, *or ſome other Chief Officer, or to reſtore it himſelf to the Perſon, whom he believed it belonged to.* And tho' * *Polybius* ſays, this Puniſhment was inflicted only for *Theft* committed *in the Camp*, or *within Ten thouſand Paces of it*; yet he ſeems to think, it was alſo intended to put a Check upon ſuch as were addicted to *Maroding* and *Plundering* the Countrey on the March; who, no doubt, were as ſeverely handled, as thoſe that were convicted of *Theft* within the Limits mentioned in the *Oath*: For beſides

* *Polyb. lib.* 10.

what

what is tranſmitted to us of the Emperours * *Aurelian* and *Peſcennius Niger*, who in the moſt diſſolute times did ſtrict Juſtice upon Soldiers convicted of this Crime, we have abundance of Examples in Hiſtory, that ſhew it did not want due Puniſhment in earlier Ages. *Sertorius* beheaded a whole Legion for *Pillaging and Waſting the Countrey.* † *Tiberius* order'd a Soldier to be put to death for ſtealing a *Peacock*: But this, indeed, is by *Suetonius*, who gives the account of it, plac'd among his Acts of Cruelty, as bearing no proportion to the quality of the Offence.

* Peſcennium Nigrum ob unius Gallinacei direptionem decem commanipulones qui raptum ab uno comederant, ſecuri percuti juſſiſſe. *Spartianus in Peſcen.*

† *In Vita Tiberii, cap.* 60.

In every Nation and Age, an *Oath* has been of the greateſt weight, and moſt ſacred Authority; and it was a receiv'd Opinion among the Heathens, that ſome very * grievous Puniſhment would fall upon Perſons forſworn; but becauſe Divine Vengeance did not always immediately overtake the Guilty, and the Fear of it became by that means inſufficient to ſuppreſs the enormous Sin of *Perjury*, Laws, with heavy Penalties were invented for that purpoſe; among which was the *Fuſtuarium* for thoſe *Soldiers*, that ſhould *impiouſly bear falſe witneſs upon Oath* againſt another.

* Deorum injurias diis curæ. *Tacit. Annal.* 1. *cap.*73.
From whence dire Plagues, and dreadful Slaughters come
On baſe and perjur'd Wretches. Heſiod.
Nullum enim vinculum ad adſtringendam fidem jurejurando majores arctius eſſe voluerunt. *Cicero de Offic. lib.* 3. *cap.* 31.

It will ſeem no Wonder, that the *Romans* were ſo rigorous and exact in puniſhing all Unnatural Abuſes of the Body, if we conſider the vaſt Number of Youths, and thoſe, as * *Lipſius* ſays, *in ipſo vigore formæ, In the very Prime of their Beauty*, aſſembl'd in their Armies, and, as ſome affirm, the ſtrict Prohibition that no Woman ſhould be admitted into their Camps.

When a young Gentleman, who had been ſollicited by his Officer to proſtitute his Body, ſtabb'd him, with this Expreſſion, *Virum me ſcito*; *Marius*, the *Tribune*, not only acquitted, but commended him for his Deteſtation and Reſentment of ſo foul and unmanly an Attempt. But it was not

* *Dial.* 18. *lib.* 5. *De Militiâ Romanâ.*

only forbidding Women the Camp, that made the *Roman* Soldiery ſo prone to this Beaſtly Vice; they were not allow'd to have * Wives ſo long as they continu'd in the Service; that is, if they were ſingle when they firſt entred; till the Emperor † *Septimius Severus* repeal'd that *Law*, and ſuffer'd them to marry. For tho' by the *Municipal Laws* of *Rome* all Men were encourag'd to Marry, and Rewards given to thoſe that had a certain Number of Children, and a Penalty laid upon *Celibacy*; yet the *Camp* was to be under a quite different Regulation, leſt the too frequent Uſe and ſoft Converſa-

* *Zach. Hubertus, Diſſert. ad l.* 63. *de Rit. Nupt. c.* 8.

† Primus autem ut uxorem domi milites Romani haberent Imperator, *Severus* permiſit, *ut auctor eſt, Lib.* 3. *Herodianus. Stewechius ad lib.* 1. *Vegetii, cap.* 3.

tion

tion of Women should enervate the Soldier, and render him less capable of his Military Duties. And 'tis evident from what * *Tacitus* says of *Tiberius*'s sending *Drusus* early into the Army, that it was *then* look'd upon as a Place of more † Vertue, and stricter Morals, than the City. Yet the Learned are by no means agreed in this Particular; some contending, that this Rule or Custom of not suffering Women in the *Roman Camps* was Religiously observed; others, that notwithstanding their utmost Precaution, the Ladies of Pleasure did steal into them, and were entertained there. To support the first Opinion,

* Juvenem urbano luxu lascivientem melius in Castris haberi. *Tacit. Annal.* 2. *cap.* 44.

† *Castra* dicta, quasi casta, quòd castraretur in iis libido. *Isidorus.*

Lipsius

Lipſius produces the Authority of *Propertius:*

Romanis utinam patuiſſent Caſtra puellis!

But * *Sichterman* makes it plain, this Verſe does not relate either to Miſtreſſes or Wives, but to Women in general, who, by reaſon of their Sex, were not allow'd to bear Arms. And becauſe *Lipſius* foreſaw, it might be objected, that *Scipio* in his Reformation of Military Diſcipline, diſcharged the Camp of Two Thouſand looſe Women; from whence it might be inferr'd, That Married Women were ſtill kept in the Camp, and that Strumpets had been permitted to be in it before *Scipio*'s Re-

* *Diſſert. de Pœnis Milit. cap.* 3.

formation;

formation; he asserts, that the *Latin* Word *Scorta* in that place is not taken for *Lewd Women*, but *Viri mulierioſi*; and it cannot be deny'd, but that it is ſometimes uſed in a Maſculine Signification; yet if it be conſider'd, that * *Lipſius* himſelf ſays, this Crime was Capital in the *Roman* Army, how can it be imagined, that *Scipio*, whoſe Intention was to reſtore Military Diſcipline, and purge the Camp of thoſe Vices that had crept into it through the Indolence of former Commanders, could be ſatisfied with the bare turning them out of the Army, when they had every one incurred the Penalty of Death by their unnatural Practices? But this Difficulty is clear'd by † *Appian*; who

* *Lib.* 5. *De Militiâ Romanâ, Dial.* 18.
† *De Bellis Hiſpani.*

ſpeaking

ſpeaking of *Scipio* on this occaſion, uſes theſe Words: * Ἐλθὼν ὃ ἐμπόρους πάντας ἐξήλασε καὶ ΕΤΑΙΡΑΣ, καὶ μάντεις, καὶ θύτας. *Upon his firſt coming to the Camp, he ſent away all the Sutlers, Whores, Conjurers and Prieſts.* Now ΕΤΑΙΡΑΙ is no where to be found in the Senſe *Lipſius* applies to the Word *Scorta*. Beſides, he tells us in the ſame † Book, that a lewd Woman was found in Carnal Act in the ‡ principal Street of the Camp; which was accounted Sacred, becauſe their Altars were erected in it, Nor does *Tacitus*, from whence he has the Story, complain, that a Woman was found in the Camp; but that ſhe

* Simul atque in Caſtra venit, mercatores omnes, SCORTA, Ariolos, ſacrificoſque expulit.

† *Lipſius*, *Lib.* 5. *Dial.* 4.

‡ In ipſis principiis ſtuprum auſa. *Tacit. Hiſt. Lib.* 1. *cap.* 48.

had

had profaned so * *Sacred* a Place. If therefore no Woman had been permitted to be in the *Roman* Camp, how could that Place have been polluted in the manner mention'd by the Historian? But *Lipsius* could not be ignorant, that the Empress *Agrippina*, *Nero*'s Mother, honour'd the Place of her Birth on the Banks of the *Rhine*, with a Colony of *Romans*, which in time grew to be the Famous City of *Cologne*. Now she could not have been born there, if her Mother † *Agrippina* had not been allow'd to have staid in the *Roman* Camp with her Husband *Germanicus*. So that

* Sacra & casta principia habita fuisse in Religione. *Lips. lib.* 5. *Dial.* 4.

† Sed Agrippina, quo vim suam, sociis quoque nationibus ostentaret, in oppidum *Ubiorum*, in quo genita erat, veteranos, Coloniamque deduci imperat, cui nomen inditum ex vocabulo ipsius. *Tacit. Annal.* 12. §. 27.

if there was any Law to forbid Women the Camp, 'tis plain, from the Inſtances before mentioned, it did not extend to *Officers*, nor was very ſtrictly obſerved by the *common Soldiers*.

The next Crime which fell under the Diſcipline of the *Fuſtuarium*, was *Stubborneſs*, or an obſtinate Perſeverance in doing ill. Some allowance is to be made to Beginners, and ſuch as are * ignorant of Military Diſcipline; but old incorrigible Offenders, that are hardned in Wickedneſs, and act in contempt of the Laws, ought to ſuffer without Mercy: Wherefore the *Romans* pu-

* Sed tyronibus parcendum eſt, qui ſi iterato hoc admiſerint pœna competenti adficiuntur. *Digeſt. lib.* 59. *Tit.* 16. *De Re Militari. Leg.* 3. §. 9.

Sed & ignoranti adhuc Diſciplinam Tyroni ignoſcitur. *Eod. Leg.* 4. §. 15.

niſh'd thoſe that had been * *thrice* convicted and fined, *capitally*; Not ſo much for the ſimple nature of the Fault, † as the Uncertainty to what pitch of Extravagancy their Evil Diſpoſition might lead them; and becauſe Men by a Frequency in doing ill, contract ſuch a Familiarity with Vice, as they will hardly ever be able to renounce. Beſides, the Law provides, that *all Degrees of* ‡ *Contumacy in a Soldier, ſhall be puniſh'd with Death.*

† Ὁ τρὶς περὶ τὰς αὐτὰς αἰτίας ζημιωθεὶς. *Polyb. lib.* 6.

† Quod talem pravo ingenio cenſebant & factum ad peccandum, & quod quaſi per contemptum ludibriumque Legis peccaret. *Lipſ. De Milit. Rom. lib.* 5. *Dial.* 18.

‡ Contumacia omnis adverſus Ducem vel Præſidem militis capite punienda eſt. *Digeſt. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 6. §. 2.

CHAP. III.

THE *Crimes* treated of in the foregoing Chapter are *common* to all, and Capitally puniſhed, as well in ſuch as do not belong to the Army, as thoſe that are in it, tho' in a different manner; that is, in the Soldier by the *Fuſtuarium*. Let us now ſee what were properly *Military Crimes*, and *capitally* puniſhed in the *Roman* Armies. *Polybius* mentions three: Ἐὰν τίνες ψευδῆ περὶ αὑτῶν ἀνδραγαθείαν ἐπαγγείλωσι τοῖς χιλιάρχοις ἕνεκεν τοῦ τιμὰς λαβεῖν. *If any falſely reported a brave Action of themſelves to their Officers, with a Deſign of obtaining Honour or Reward for the ſame.* Ὁμοίως ἐάν τίνες ἐς ἐφεδρείαν ταχθέντες φόβου χάριν λίπωσι τὸν δοθέντα τόπον. *If any being placed Centinels or Guards, deſerted*

deserted their Posts through Fear. Ἐάν τις ἀπόῤῥιψη τὰ τῶν ὅπλων κατὰ αὐτὸν τὸν κίνδυνον διὰ φόβον. *If any one through Fear cast away any part of his Armour in time of Danger.* These, he says, are Crimes which the *Romans* imputed to *Cowardice* and ill *Conduct.*

I have already shewn, it was Capital in a Soldier to *Bear false-witness*; which is to be distinguish'd from this Crime, *that* having respect to Religion, *this* relating only to the foolish Boasting of vain-glorious Men. The Reason why the *Romans* made this Offence *Capital*, was, because they proposed, and gave great Rewards to such as signalized themselves in time of Action. *Lipsius* relates from *Livy*, a warm Dispute between Two Brave Officers, who should have the Reward

promis'd

promis'd by *Scipio* to the Perſon who firſt mounted the Walls of * *New Carthage*; which, for the greater ſatisfaction of the Curious, I have ſet down at large in the Margin.

The *leaving* or *deſerting* a *Poſt* or *Station*, was a Capital Offence by the

* Exemplum illuſtre in *Livio*, cujus hic ſenſus ſi non verba. Scipio Carthaginem Novam cæperat ſua fortuna pariter & militum virtute, ſedit pro Tribunali, ut mos, præmia cujuſque operæ daturus. Coronam muralem propoſuit ei qui Primus murum aſcendiſſet. *Duo profeſſi ſunt, Q. Trebellius Centurio, & Sex. Digitius Socius Navalis.* Magno certamine Res gerebatur, cum ſui cuique corporis fautores & ſuffragatores adgregarentur. Scipio, ut litem decideret, tres recuperatores dedit, qui teſtibus auditis cognoſcerent ſtatuerentque. Id verò non remedium ſed augmentum motus fuit. Stabant utrinque *per omnes Deos parati jurare magis quæ mallent quàm quæ ſcirent vera eſſe, per ſigna, per aquilas, & per quicquid eſſet Religionis.* Lælius ille ſapiens mali exempli rem cenſens, & non longè à ſeditione, ad Scipionem venit, proſpicere monuit & temperare: Ille igitur pro Tribunali ſic pronunciat: *Se ſatis compertum habere Q. Trebellium & Sex. Digitium pariter in murum aſcendiſſe, ſeque eos ambos virtutis causâ coronis muralibus donare.* Lipſ. de Milit. Rom lib. 5. Dial. 18.

Roman

Roman Diſcipline : But *Polybius* confines it to thoſe only that did it διὰ φόβον, *thro' Fear*, for which *Lipſius* applauds him, perhaps, without any great reaſon : For *Suidas* upon this ſame Paſſage, obſerves, that the *Roman* Law, condemning the Soldier to die, who deſerts his Station, * *causâ quâcunque*, upon any account whatever, is too ſevere ; he makes no mention of *Fear*, but ſays, *causâ quâcunque*, without exception. And ſo † *Suetonius* ſpeaks of *Auguſtus* in general Terms, *He condemned the Centurions and Subalterns who deſerted their Poſts, to ſuffer capitally.* But, ſays *Lipſius*, what if an Officer or Centinel be driven from his Poſt by

* Et ſevera in eo Lex eſt Romanorum ut moriatur qui causâ quâcunque exceſſerit. *Suidas Lipſio interprete, in M. R. lib.* 5. *Dial.* 18.

† *In Vitâ Auguſti, cap.* 24.

a ſupe-

a ſuperior Force? * It is but reaſonable in that caſe to excuſe him; and therefore the Reſtriction ἀφὸβον was rightly added by *Polybius*, as if deſerting or quitting a Poſt *for any other Cauſe* was not a Capital Offence; the contrary of which is evident from the Teſtimony of the Authors above-cited: And indeed, if we conſider its Nature, how could it be otherwiſe? For where, I pray, is the difference, as to the ill conſequence, whether a Soldier leaves his Poſt *for fear of loſing his Life*, or *to go to his Miſtreſs*, if in the mean time the Enemy gets poſſeſſion of it? Nor will, what *Lipſius* ſays in behalf of him that is driven from his Poſt

* Quid enim ſi impetus hoſtilis pepulit & vis violenta? Omnis ratio eſt ignoſci. *Lipſ. lib.* 5. *Dial.* 18. *De Milit. Rom.*

by

by a superior Force, be allow'd as a good Excuse, if it be consider'd, that it was a *Roman* Military Maxim, * *Either to conquer or die*; because they were sure to be punished with death, if they suffer'd themselves to be overcome. But it may be said, Why then did *Polybius* add these Words? To this it is answer'd, That it is not pretended they are superfluous; but only that by this Restriction, *through Fear*, he did not intend to signifie, that the Crime of *deserting a Post* was in no other case *Capital*: For 'tis plain, these Words, φόβῳ χάριν, and διὰ φόβον, relate to the Distinction he makes just before, of

* Suis militibus Legem olim latam fuisse, ut aut vincerent pugnando, aut morerentur: quippe olim viam nullam salutis aliam victis supereſſe. *Polyb. Lipsio interprete in fine, lib.* 6.

Crimes that are *common to all Men*, and ſuch as are to be imputed to ἀνδρεῖαν & στρατιωτικὴν ἀρχύνλω, *the Cowardice* and *ill Conduct of a Soldier*, both which are notoriouſly evident in the Man that leaves his Poſt *for Fear*; but not in him that is forced to retreat by an *over-powerful Charge of the Enemy*, which, however, in ſtrictneſs, is puniſhable with Death, tho' not ſo infamous as the other.

The ſame Argument holds good in the following Crime of a Soldier's throwing away any part of his Arms *in time of danger, thro' Fear.* Here again, *Lipſius* diſtinguiſhes, and makes this Offence *Capital*, * under a double Reſtriction;

* Cum duplici reſtrictione, *ſi in acie, ſi per metum. Lipſ. De Milit. Rom. lib.* 5. *Dial.* 18.

that

that is, if it were done *in time of danger, and thro' Fear*; both which, as I said before, relate to the Distinction above-mentioned: For *Modestinus* lays down the Law in general Terms, that * *Whoever loses or alienates his Arms, is to be punished with death.* And *Paulus*, another great Lawyer, says plainly, † *The Crime of alienating, or selling of Arms, is equal to that of* Desertion: Not a word of *Action, Danger* or *Fear* by either of these. From whence we may gather, that altho' *Polybius* makes it Capital for a Soldier to throw away any part of his Arms, *thro' Fear, and in time of danger*, yet 'tis not from

* Miles qui in bello arma amisit vel alienavit, capite punitur humanè militiam mutat. *Digest. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 3. §. 13.

† Arma alienâsse grave crimen est, & ea culpa desertioni exæquatur. *Dig. eod. Leg.* 24. §. 1.

thence to be inferr'd, that doing it at any other time, or for any other Cauſe, was not puniſhable in the ſame degree. This is plainly made out, by what *Valerius Maximus* relates from *Plutarch* of *Cæſius Scæva*, a Common Soldier, in *Julius Cæſar*'s Expedition againſt this Iſland, who, with four of his Companions, having taken poſſeſſion of a Rock near the Shoar, after they had forſaken him, maintain'd his Station for a long time againſt a great Number of the Enemy: But being at length run thro' the Thigh, and having loſt his Head-piece, and receiv'd ſeveral Wounds in his Face, he threw himſelf into the Water, leaving his Shield behind him, and ſo ſwam to the Shoar, where ſeeing the Emperour, he immediately fell at his Feet, and ask'd Pardon for

the Loss of his Arms. * *A Great Example*, says my Author, *of Bravery, but a far greater of the Observance of Military Discipline*; according to which, remembring that he was liable to suffer death, he took care to fly immediately to the Emperour for relief against the Severity of the Law. Which Story being touch'd upon by *Lipsius*, in his Notes upon *Polybius*, it is surprizing he should not have observ'd the Penalty of losing or quitting Arms was not to be confin'd to the Case of *Fear*; since nothing could be so remote from it, as this Brave *Roman*'s Behaviour; and yet he did not think himself out of danger, till the Emperour had

* Magnus prælio, sed major disciplinæ militaris memoria. *Valer. Max. lib.* 3. *cap.* 2.

approved

approved of his Conduct, and pardoned him.

So much for the Military Crimes ſubject to the *Fuſtuarium*, according to *Polybius*. There were ſeveral others alſo puniſhable after the ſame manner, as may be gather'd from *Juſtinian*'s * Laws, † *Cicero*, ‡ *Livy*, and ‖ *Lampridius*; which laſt, in his Life of the Emperour *Alexander Severus*, reports, that if any Officer or Soldier on the March deviated and went into the Poſſeſſions of

* Qui agmen exceſſit ex causâ, vel fuſtibus cæditur, vel murare militiam ſolet. *Digeſt. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 5. §. 16.

† Nam ſi ille Conſul (Antonius) Fuſtuarium meruerunt Legiones quæ Conſulem reliquerunt. *Cic. Philip.* 3.

‡ Fuſtuarium meretur, qui ſigna relinquit, aut præſidio decedit. *Liv. lib.* 5.

‖ *Cap.* 51.

his

his Subjects, he was, according to his Condition, either punished with the *Fustuarium* in the Emperour's Presence, *whipt* with *Rods*, or *condemn'd*. Where we are transiently to observe, that the Word *Condemnatio* signifies ~~a~~ *pecuniary Mulct*; being often, as the Commentators and Expositors of the Law affirm, * us'd absolutely in that sense. *Homicide* was also punished with the *Fustuarium*, as we learn from † *Hirtius*, who mentions a Soldier that underwent it for killing his Brother. It would be easie, were it necessary, to produce many more Examples of this nature: But let these suffice concerning the *Fustuarium*.

* *Cod. Theod. Leg.* 11. *De Milit. Veste. Leg. eod. Ne quis in Palat.* &c.
Vide Göthofr. ad Leg. 12. *Cod. Theod. De Re Milit.*

† Miles qui fratrem suum in Castris jugulabat, interceptus est à nostris, & fuste percussus. *Hirt. cap.* 27.

CHAP.



CHAP. IV.

THE next *Roman Military* Puniſhment that comes under conſidera-tion, is *Decimation*, ſo call'd, from every *Tenth Man*'s ſuffering death : But ſome will not allow *Decimation* to be a Puniſhment ; becauſe, ſay they, it is only a preparatory * Step or Means to come to it,

* *Faber Semeſtrium, lib.* 1, *cap.* 28.

and

and not the Puniſhment it ſelf; yet, methinks, we may give it that Name properly enough, ſince every *Tenth Man* being *executed*, the reſt were condemned to live upon *Barley* inſtead of *Wheat*. The manner of it is thus deſcribed by * *Polybius*: *If at any time it happen'd that whole Companies, preſs'd by the Enemy, gave ground, or turned their Backs, the Practice of the* Romans *was not to put them all immediately to death; but they found out an Expedient both* profitable *and* terrible; *For the* Tribune *calling the Legion together, and producing thoſe which had been faulty, firſt gave them a ſharp Reprimand, and then out of the Offenders he choſe by Lot ſometimes* Five, *ſometimes* Eight, *ſometimes* Twenty (*al-*

* *Polyb. lib. 6. cap. 36.*

ways having an Eye to the Number, and aiming as near as he could, to take every Tenth Man,) *and thoſe on whom the Lot fell, were beaten to death with Clubs without Remiſſion. The Reſt were condemned to have their Allowance in* Barley *inſtead of* Wheat, *and to quarter without the Intrenchment of the Camp.* Thus the Danger of the Fatal Lot hanging equally over every Man's head, and no one knowing where it would fall, tho' all were certain to be reduced to *Barley Bread*, every one was ſtruck with Terror and Apprehenſion, and a moderate Atonement made by the Death of a few, for the general Guilt. Here you have the Occaſion explained, and Manner of inflicting this Puniſhment: To all which I ſhall ſpeak more particularly anon.

Tho'

Tho' * *Galba*, upon his Entry into *Rome* as Emperour, commanded every Tenth Man who had oppoſed him, but afterwards ſubmitted, and were receiv'd into his Protection, to be put to death, it was ever look'd upon as an unlawful and tyrannical Action, and made uſe of as ſuch by *Otho*, to alienate the Peoples Minds, when he began his Attempt to Dethrone him. But as it was uſed in the *Roman* Armies to puniſh whole *Legions*, *Cohorts*, or *Maniples*, for Mutinying or Misbehaviour in time of Action, it muſt be commended as an Invention of a Noble and Wiſe Temperature, neither inclining to a Cruel Severity, nor betraying a Slackneſs of

* Horror animum ſubit quotiens recordor feralem introitum, & hanc ſolam Galbæ victoriam cùm in oculis urbis decumari deditos juberet quos deprecantes in fidem acceperat. *Tacit. Hiſt. lib.* 1. *cap.* 38.

Diſcipline; both which have very ill Effects in all kinds of Government. And tho' *Plutarch* relates of *Sertorius*, that he cauſed all the Slaves who were of *Marius*'s Faction, to the number of Four Thouſand, to be ſhot to death with Arrows, it was a Precedent the moſt cruel of the Emperours did not chuſe to follow. *Julius Capitolinus* ſays, that when *Macrinus*'s Army mutiny'd, he generally puniſhed them by *Decimation*, but ſometimes by *Centeſimation*; of which Word he was fond of being the * *Inventer*, as a Mark of his Clemency, in cauſing One only of an

* Cùm ſeditiones militares pateretur multò ſæpiùs decimavit, aliquando etiam centeſimavit, quod verbum ipſius proprium, quod ſe clementem diceret quando eos centeſimaret, qui digni eſſent Decimatione atque Vigeſimatione. *In Vita Opilii Macrini, cap.* 12.

Hundred, instead of One in Ten or Twenty that deserv'd it, to be put to death.

Some have been induced by *Polybius*'s Words to think, that the *Fifth*, *Eighth* or *Twentieth* Man was by Lot condemned to die: But *Lipsius* has cleared up this Point, and shewn, his meaning was, that according to the Number of Delinquents, sometimes *Five*, sometimes *Eight*, or perhaps *Twenty* suffered. * Suppose, says he, *five Decuries* were found guilty, then *five* Men were put to death; if *Eight* had misbehaved themselves, then *Eight*; and if *Twenty*, *Twenty*; that is, the *tenth* Man of each *Decury*.

Yet, upon some occasions, they chose rather to punish the Beginners or Ring-

* Pone, *inquit*, quinque Decurias peccâsse; quinque punientur; pone Octo, Octo; Viginti, Viginti; Decimus *scilicet* Decuriarum. *Lipsi. De Milit. Rom. lib.* 5. *Dial.* 18.

leaders

leaders in the Offence, as *Polybius* tells us *Scipio* did ; who having calmed the Commotion at *Sucro*, and reduced the Mutineers to Submiſſion, commanded the Authors of it only to be executed.

The manner of putting the Sentence of *Decimation* in Execution, was thus : Firſt, the Centurions and Enſign-bearers of the *Cohort* that had misbehaved, were by the *Præfect* or *Tribune* order'd away and put to death ; then the private Men were drawn out into *Decuries* or *Tens*, and caſt Lots among themſelves who of them ſhould die. Thus it was that * *L. Apronius* decimated that diſhonourable Cohort which run away from *Tacfarinas* in *Africa* ; and *Auguſtus* at *Promona* a City of

* Decumum quemque ignominioſæ cohortis ſorte ductos fuſti necat. *Tacit. Annal.* 3. *cap.* 21.

the Li-

Liburni, decimated a Cohort for quitting their Station, ordering the reſt to be fed with * *Barley* inſtead of *Wheat* for that ſeaſon. Monſieur *du* † *Choul* mentions a Braſs-Coin in his poſſeſſion wherein this terrible Execution is repreſented,

Concerning the Inventer of this Puniſhment, it is not certainly known who he was: But thus much appears from the *Roman* Hiſtory, That *Appius Claudius* put it in practice ſoon after the Regal Government ended; and it ſeems, it was always reckoned of ſo great Antiquity, and ſo peculiar to the *Romans*, that ‡ *Dionyſius*

* *Appianus in Illyr. p.* 767.

† Tractatus de Caſtrametatione & Diſciplinâ Militari veterum Romanorum, *p.* 54.

‡ *Lib.* 4.

Hali-

Halycarnaſſeus, *Appian* and *Plutarch*, all call it * *Lex Patria*. But it ſuffered a long Interruption, and was afterwards revived and tranſmitted to Poſterity by † M. *Craſſus*.

The Reaſon or Deſign of this Puniſhment cannot be better explained than it is by ‡ *Cicero*, *viz.* That ſo there might be *Pœna ad paucos*, *Terror ad omnes*. Neither is the *Juſtice* of it to be called in queſtion; becauſe it may happen to fall on the *Innocent* as well as the *Guilty*, and the *Brave* may ſuffer as well as the *Coward*: For,

* *Lipſius de Milit. Rom. lib.* 5. *cap.* 18.

† *Plutarch. in Craſſo.*

‡ Statuerunt majores noſtri ut ſi à multis eſſet flagitium rei militaris admiſſum ſortione in quoſdam animadvertetur ut *metus* videlicet ad *omnes*, *pœna*, ad *paucos*, perveniret. *Cicero pro Cluentio.*

as * *Tacitus* observes, every exemplary Punishment, consider'd in it self, hath something in it which is unjust and prejudicial to particular Persons, but sufficiently recompenced by the Service it does the Publick. Yet as it is more agreeable to the Dictates of Reason, that Offences committed by a Multitude should rather be revenged on the Contrivers and busie Abetters, than allotted by blind Chance to the Innocent ; so the † *Romans* frequently follow'd that Rule, of which there has been before given a remarkable Instance, in the detestable Mutiny of *Scipio*'s Army at *Sucro*.

* Habet aliquid ex iniquo omne magnum exemplum, quod contra singulos, utilitate publicâ rependitur. *Tacit. Annal.* 14. *cap.* 44.

† Postquam deliberatum esset an in autores tantùm seditionis animadverterent, vel an plurium supplicio vindicarent defectionem vicit sententia lenior ut unde orta culpa esset ibi pœna consisteret ad multitudinem castigationem satis esse. *Liv. lib.* 28.



CHAP. V.

THE next Puniſhment that occurs, is that of *Beheading* by the *Ax* or *Sword*; the manner whereof is thus deſcrib'd by *Livy*: * *Immediately the Voice of the Crier was heard citing by Name all that were condemned in the Court-Martial*;

* Præconis audita vox citantis nomina damnatorum in Concilio, Nudi in medium protrahebantur, & ſimul omnes.

Martial; who being produced, were ſtript naked in the midſt of them, and when every thing was ready for Execution, tied to a Stake, whipt with Rods, and and then beheaded with the Ax. In this manner * *Appius Claudius* puniſh'd the Centurions that had forſaken their Companies and Colours in his Battel with the *Volſci.*

Lipſius in his Notes upon † *Tacitus*, is of opinion, that the Uſe of the *Ax* as an Inſtrument of Juſtice, continu'd no longer than the Free State of *Rome*, and was ſucceeded under the Empe-

omnis apparatus ſupplicii expromebatur. Deligati ad palum virgiſque cæſi & ſecuri percuſſi ſunt. *Liv. lib.* 28.

* *Livii lib.* 2.

† *Lipſius ad lib.* 15. *Annal.*

rours by the *Sword*, which, he ſays, was unknown to the Ancient Republican Government even in the Army; therefore * *Lucan* ſays,

--- Nondum artis erat caput enſe rotare.

But, with all the Deference due to ſo Great and Learned a Man, one may venture to ſay he is miſtaken in both: For neither was the Uſe of the *Sword* in Executions wholly unknown in thoſe ancient times, nor is the Poet to be ſo underſtood: For his Meaning is, not that there were *many* or *few* beheaded, but that the Executioner, in the Age he wrote, having learnt his Trade

* *Lib.* 8.

to a

to a greater degree of Perfection, could dexterouſly cut off the Head at a ſtroke; which Art was a Secret when *Pompey* was murther'd; and therefore he deſcribes *Septimius* who cut off his Head, as an ignorant unexperienced Executioner.

Tunc nervos venaſq; ſecat, nodoſaq; frangit
Oſſa diu, *nondum artis erat caput enſe rotare.*

There awkard, haggling, he divides the Bone,
The Headſman's Art was then but rudely known, [Rowe.

But under the Emperours they grew to be greater Artiſts; and tho' the ſame manner of Beheading had been in uſe long before, the Executioners were not ſo expert as to ſever the Head from

from the Body at one Blow. And 'tis evident from the Expreſſion *Jugulum præbere*, which we often meet with in the *Roman* Hiſtorians, that *cutting the Throat* with a *Sword* was common under the Free State, as ſhall be ſhewn more fully hereafter. But firſt, it muſt be obſerv'd, that *Lipſius* in his Notes upon * *Tacitus*, prefers the Puniſhment of the *Sword*, as more honourable than that of the *Ax*; and therefore, ſays he, when *Papinian* was by Order of *Caracalla* beheaded, in which the Exe-cutioner had uſed the *Ax*, the Empe-rour ſaid, *Gladio te exequi oportuit meum juſſum*; *You ſhould have put my Command in execution with the Sword.* But ſince this Opinion is not ſupported with any

* *Tacit. Annal. lib* 15. *Lipſio interprete.*
Caſaubonus ad Suetonium in vita Auguſti, cap. 15.

Authority

Authority of the Learned, I see no reason why that Reproof, as * *Valtrinus* judiciously observes, may not be taken either way; as, that *Caracalla* thought *Papinian* had too much Honour done him by suffering under the *Ax*, as well as that he should design him a Favour, in permitting the Execution to be done with a *Sword*: Nay, the Circumstances of his Death seem to persuade the contrary: For what Favour could a Man expect, whose Life was taken away for refusing to defend the Emperour's murthering his own Brother? As to the Passage of † *Xenophon*, cited by *Lipsius*, to prove *Beheading* the most reputable kind of Death, it seems to make little for his purpose, being in

* *Valtrinus De Re Milit. Roman. lib. 6. cap.* 8.

† *Xenophon De Cyri expeditione, lib.* 2. extremo, *De cæde Menonis Thessali.*

general

general Terms, without diſtinction of the Inſtrument, and that too, of the *Grecians*, not the *Romans*. *Caſaubon*, upon better grounds, calls it a *milder* and *more noble* Puniſhment, for which he brings the Authority of *Livy*. * *The Loſs received in the Battel was not ſo conſiderable as that the* Tarquinians *ſacrificed three hundred and ſeven* Roman *Soldiers, whom they had taken Priſoners; Which ſhameful Exeeution rendred their late Diſgrace ſomething more notorious.* And then this Learned Commentator adds, the Reaſon why this kind of Death was accounted ſo diſhonourable, is plain from † *Florus.*

* Nec in acie tantum ibi cladis acceptum quam quod *cccvii* milites Romanos captos *Tarquinienſes immolârunt*, quâ fœditate ſupplicii aliquantò ignominia populi Romani inſignior fuit. *Liv. lib. 7.*

† Legatos quippe noſtros, nec *gladio* quidem, ſed ut victimas *ſecuri* percutiunt. *Flor. lib. 2. cap. 5.*

They

They put our Embassadors, says he, *to death, not with the* Sword, *but as Victims, with the* Ax. Now whether it can be rightly inferr'd from the foregoing Passage of *Livy*, that the *Sword* was reckon'd a more honourable Instrument of Execution than the *Ax*, is left to the determination of better Judges: For the Disgrace mentioned therein, seems to have arisen, not so much from the Soldiers suffering under the *Ax*, as their being offered by way of *Sacrifice* to the *Infernal Gods* of their Enemies. As for the Passage in *Florus*, 'tis probable, he spoke the Language, and according to the prevailing Opinion of his own time.

But admitting the Punishment of the *Ax* to be less honourable than that of the *Sword*; yet *Lipsius*'s Assertion concerning the Use of the Sword's

being wholly * unknown in the time of the Republick, muſt neceſſarily fall to the ground: For how could *Florus* make a diſtinction between the two Puniſhments, unleſs that of the *Sword* had been likewiſe in uſe? I need not mention the frequent Inſtances given by † *Hirtius*, of Soldiers being put to death with the Sword. Yet it can not be denied, that under the Emperours, the *Ax* by degrees grew into diſuſe, and was ſucceeded by the *Sword*.

The Office or Work of *Execution* was generally committed to Perſons whoſe proper Buſineſs it was; that is,

* *Reip. priſcæ gladii ſupplicium fuiſſe ignotum.* Lipſ. ad Tacit. Annal. lib. 15.

† *Hirt. Comment.* de *Bello Afric. & Hiſpan.*

the ‡ *Speculatores. Being brought out of the Camp, as he held his Neck ready for the Stroke, his Fellow-Soldier who was supposed to have been murther'd, appeared. Then the Centurion, who was to see Execution done, bid the Headsman,* Speculatorem, *put up his* Sword. Sometimes Soldiers were deputed for this Office, as *Lipsius* in his Notes upon *Tacitus*, and * *Stewechius* upon *Vegetius* endeavour to make out by help of this Passage in *Suetonius* : † *There was a* Soldier, *a dextrous Headsman, who*

‡ Extra vallum deductus, & jam cervicem porrigebat, cùm subitò apparuit ille commilito qui occisus videbatur. Tunc Centurio supplicio præpositus, condere gladium *Speculatorem* jubet. *Seneca de Irâ, lib.* 1. *cap.* 16.

* Erant quippe hi *Speculatores* suppliciis sumendis destinati. *Stewechius ad Vegetium, lib.* 1. *cap.* 23.

† *Miles* decollandi artifex quibuscunque è custodiâ capita amputabat. *Sueton. in Vitâ Calig. cap.* 32.

cut off the Heads of Offenders. Now this Soldier was certainly the *Speculator.* Nor is it any Proof to the contrary, that he was called *Miles*; For ſo *Chaereas* terms the Executioner, who afterwards cut off his Head at one Blow, and ask'd him, if he were expert * *ad σφαγὰς*, or whether that was his firſt Eſſay? But *Lipſius* goes farther, and affirms, that the † *Tribunes* ſometimes executed Malefactors with their own Hands; and ‡ *Stewechius* concurs in that Opinion, but with this diſtinction, that they were employed only when the Offender

* MILITEM à quo uno ictu occiſus eſt, rogavit, an exercitatus eſſet *ad σφαγὰς*, an *tum primùm* haberet gladium? *Joſeph. Antiq. Jud. lib.* 19. *cap.* 5.

† *Lipſ. ad Tacit. Annal.* 15.

‡ Id ipſum tunc ita obſervatum, cùm qui puniendus erat aliquâ dignitate reliquis anteſtaret. *Stewech. ad Vegetium, lib.* 1. *cap.* 23.

was

was a Person of Rank: Yet by the Authorities they alledge to support this Opinion, it does not appear, that after judicial Sentence of Death, any *Tribune* was ever order'd to do that Office. But in Cases of great Confidence or Secrecy, or when the Person to be dispatch'd was a popular Man, and it might be dangerous or difficult to proceed formally against him; then, in all likelihood, a *Tribune* was privately ordered to put him out of the way. Thus *Tiberius*, Brother to *Caligula*, was kill'd by a *Tribune*; and of later Ages, the Marquis *d'Ancre* in *France*, and the Duke of *Wallenstein* in *Germany*, were both taken off by Officers specially commissioned for that purpose. However, it must be allow'd, that both *Centurions* and *Tribunes* had often

often the Inſpection and Superintendency of Executions. All here contended for, is, that it was not common for *Tribunes* or other Officers of diſtinction to execute Malefactors with their *own Hands*. Hence it was, that *Chaereas* in * *Joſephus*, complain'd, and accus'd *Clemens* and *Papinius* of degenerating from *Soldiers* into *Hangmen*, by ſubmitting to torment and butcher whomſoever the Emperour *Caius* commanded; which he would not have reproach'd them with, had it been their proper Buſineſs; becauſe they could naturally and truly have anſwer'd, they were not to blame, ſince their Office oblig'd them to it. So that, all *Lipſius* proves, amounts to no more, than

* *Joſephus, Antiq. Jud. lib.* 19. *cap.* 1.

that

that upon occasions, where the Formalities of Law were laid aside, and extraordinary Dispatch and Fidelity requir'd, some bold and resolute Officer was made choice of to give the deadly Blow. Thus *Plautius Lateranus*, *Consul Elect*, was hurried away to the Place of *servile Executions*, and killed by the Hand of * *Statius* the *Tribune*; and † *Messalina* dy'd *ictu Tribuni*, as *Tacitus* reports. How weak and groundless therefore, this Assertion of *Lipsius* is, the Reader will judge.

* Manu Statii Tribuni trucidatur, *Tacit. Annal.* 15.

† Ictu Tribuni transfigitur. *Tacit. Annal.* 11.

CHAP.



CHAP. VI.

PRecipitation, or *throwing headlong*, was a common Puniſhment among the *Romans*. The Place of Execution was the *Tarpeian Rock*, which is elegantly deſcrib'd by * *Seneca*, and,

* Stat moles abſciſſa in profundum, frequentibus exaſperata ſaxis, quæ aut elidant corpus, aut de integro gravius impellant, inhorrent ſcopulis enaſcentibus latera, & immenſæ altitudinis triſtis adſpectus, electus potiſſimùm locus ne damnati ſæpius dejiciantur. *Sen. lib.* 1. *Controv.*

as he ſays, uſed in imitation of the *Jews* and *Greeks*, whoſe Annals abound with Examples of that kind. But, as the *Romans* inflicted it alike upon the *Citizen* and *Peaſant*, as well as the *Soldier*, it may perhaps, ſeem irregular, to give it a Place among their Military Puniſhments; yet, as Hiſtory affords ſome Inſtances of Soldiers condemned to ſuffer *that way*, for Crimes committed in their *Military* Capacities, it was not fit ſilently to paſs over ſo worthy a Monument of the *Roman* Severity. Thoſe Soldiers, then, whom we find were thrown from the *Tarpeian* Rock, were *Deſerters*; of which ſort, * *Marcellus* recovered *Three hundred* and *ſe-*

* *Livii lib.* 24.

venty, in the Towns he took from the *Samnites*; who being ſent to *Rome*, were all firſt ſcourged with Rods in the *Comitium*, and then pitch'd headlong from the *Tarpeian Rock*, as the *Centinel* had been, thro' whoſe Neglect the * *Gauls* had like to have ſurprized the *Capitol*. Afterwards, whether this Puniſhment ſeem'd too cruel and ſevere to the *Romans*, as † *Faber* and ‡ *Gothofredus* are inclin'd to think; or whether it happen'd thro' the Corruption and Remiſneſs of their Government, it was intirely neglected, and at length repealed, a

* *Livii lib.* 5.

† *Faber Semeſtrium, lib.* 1. *cap.* 18.

‡ *Gothofredus ad Leg.* 35. *lib.* 48. *Digeſt. De Pœnis.*

‖ Law being enacted that no Man should suffer that kind of death. See *J. Ricquius de Capitolio Romano, cap.* 3. & 4.

CHAP. VII.

SOME Crimes, as † *Macer* observes, being committed by a *Peasant*, or other Person in a Civil Capacity, are either *not punished at all*, or *very lightly*; but if committed by a *Soldier*, with great Severity: Which is thus to be understood, that the same Crime is

‖ Non potest quis sic damnari ut de saxo præcipitetur. *Digest. lib.* 48. *Tit.* 19. *De Pœnis, Leg.* 27. §. 1.

† Quædam delicta Pagano aut nullam aut leviorem pœnam irrogant, militi verò graviorem. *Dig. lib.* 48. *Tit.* 19. *De Pœnis.*

puniſhed in a *Soldier* more rigorouſly than *in another*: Not that the *Roman* Military Puniſhments were in themſelves of a more dreadful nature: On the contrary, all that belonged to the *Army*, were by the Laws exempted from ſuffering many of the moſt grievous, to which Perſons in Civil Life were liable; as, to *work* in the * *Mines*, be *tortured*, or *expoſed* to be *devoured by Wild* † *Beaſts*; For no Soldier, ſays *Modeſtinus*, was ſubject to any of theſe. But this was the Privilege of ſuch only as were clear and unblemiſh'd

* In metallum, aut in opus metalli non dabuntur, nec torquentur. *Dig. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 3. §. 1.

† Ad beſtias furcamque damnabitur *(deſertor)* quamvis milites eorum nihil patiuntur. *Dig. eod.* §. 10.

in

in their Reputations; which was quite otherwise with *Deserters* and *Fugitives*, who were look'd upon in the Law as * *Enemies*, not *Soldiers*, and therefore not allow'd the Right of † *Postliminium*, but might be put to death by any ‡ one wherever they were found. Nor had they so much favour, as to be condemned to suffer as *Soldiers*, but like *Murtherers* and *Assassins*, were thrown to Wild Beasts, the most in-

* Proditores transfugæ plerumque capite puniuntur, & exauctorati torquentur; nam pro hoste, non pro milite habentur. *Digest. eod. Leg.* 7.

† Transfugæ nullum *Postliminium* est; nam qui malo consilio & proditoris animo patriam reliquit, hostium numero habendus est. *Digest. Ob.* 49. *Tit.* 15. *Leg.* 12. §. 4.

‡ Transfugas licet ubicunque inventi fuerint, quasi hostes interficere. *Dig. lib.* 48. *Tit.* 8. *ad Leg. Cornel. Leg.* 3. §. 6.
Digest. lib. 49. *Tit.* 1. *De Appel. Leg.* 18.

famous

famous of all *Roman* Puniſhments, and generally inflicted upon *Criminal Slaves*. And tho' a * *Deſerter* returned of his own accord, he did not thereby avoid the Penalty of the *Law*, unleſs at his return he made ſome uſeful Diſcovery; in which caſe his Life might be ſpar'd; but that was the utmoſt Favour he could expect: For † however advantageous his Return might be to the Publick, it could not wipe away the Stain of *Treaſon* fixed

* Is qui ad hoſtem confugit, & rediit, torquebitur, ad beſtiaſque, vel in Furcam damnabitur. *Dig. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 3. §. 10.

† Quantumcunque enim emolumenti revertens Reipublicæ contulerit, non tamen ad diluendum Majeſtatis crimen quod ab hoſtes tranſeundo contraxit, ſufficere poterit. Sic ut illo caſu quo nullum ab eo ſupplicium fuerit exactum ex merâ potiùs gratiâ atque Principis clementiâ, quàm ullo novo merito pœnæ remiſſio indulta cenſeri debeat. *Johan. Voet. De Jure Milit. cap.* 4. *n.* 21.

upon

upon him, by deserting the Service of his Countrey, and going over to the Enemy: So that if he escaped with Impunity, it was rather owing to the special Grace and Clemency of the Prince, than to any new Merit or Right he could pretend to.

From what has been said, we learn, that the *Romans* punished *Deserters* and *Fugitives*, by delivering them to *Wild Beasts*, as * *Valerius Maximus* reports *Scipio Africanus* did, after the Subversion of the *Carthaginian* Empire, and † *L. Paulus Æmilius*, when he had subdued

* Everso Punico Imperio, exterarum gentium transfugas in edendis populo spectaculis ferit objecit. *Lib.* 2. *cap.* 8. *De Discip. Milit.*

† Et L. Paulus Perse Rege superato, ejusdem generis & culpæ homines elephantis proterendos substravit. *Val. Max. eod.*

Perses

Perſes King of *Macedon*. But it muſt be obſerved, theſe who were thrown to Wild Beaſts, by way of *Puniſhment*, differ'd very much from ſuch as were brought into the *Arena* to fight with them, being *faſt bound to Stakes*, without any poſſible Means of reſiſting or defending themſelves from the Fury of their ravenous Executioners.

But having before ſaid, that *Deſerters* and *Fugitives* were not to be treated as *Soldiers*, but as *Enemies*; it may be asked, How this can be reckoned a *Military* Puniſhment? It is anſwer'd, that *Military* Puniſhments are not only *thoſe*, to which ingenuous or free Men are ſubject; but ſuch as at any time are inflicted for a Military Crime, notwithſtanding the Perſon that ſuffers be not actually a Soldier.

Soldier. In which ſenſe the *Croſs* may likewiſe be properly enough ſet down among the *Roman* Military Puniſhments: For otherwiſe, it was peculiar to * *Slaves*, and Crimes of the moſt pernicious Example. But *Valerius* † *Maximus* and ‡ *Livy* both afford ample Teſtimony that Deſerters to the Enemy were often *Crucified*, and that with great Juſtice: For what Puniſhment could be ſevere or infamous enough for Men that were not aſham'd to draw their Swords againſt their Countrey, and turn them, as it were,

* *Plautus Mil. Glorioſ.* 2. 4. 19.
Conditione fugitivus nomine *Geta* ſumptum de eo ſupplicium in ſervilem modum. *Tacit. Hiſt. lib.* 2. *cap.* 72.
Aſiaticus malam potentiam ſervili ſupplicio expiavit. *Tacit. Hiſt. lib.* 4. *cap.* 11.

† *Valer. Max. lib.* 2. *cap.* 7. *De Diſcipl. Milit.*

‡ *Liv. lib.* 30. *fine.*

into their own Bowels? But it was uſed in the Army, in extraordinary Caſes only, and for Crimes of a tranſcendent nature. Therefore *Avidius Caſſius* is highly blamed for *Crucifying* certain *Officers*, becauſe they had attack'd the Enemy without Orders: For tho' Antiquity would have born him out, by the Example of * *Torquatus* and ſome others, who did not ſpare their own Children and Relations when they diſobey'd Command; yet the *Romans* had long ſince receded from that extreme Severity in their Diſcipline; and the Example of † *Corbulo* might have taught him

* *Poſthumius Dictator. Manlius Torquatus. Livii lib.* 4. & 8.

† Præfectos militeſque omnes extra Vallum tendere juſſit. *Tacit. Annal.* 13. *cap.* 36.

more

more Humanity, who on a like occasion, only enjoyn'd the Officers and Soldiers to undergo the Infamy of *Pitching their Tents without the Camp.* * *Vulcatius* gives this as an Instance of the Emperour's cruel Disposition: And both he and † *Opilius Macrinus* are by Historians heavily censur'd for punishing their Soldiers in this *barbarous* and *servile* manner.

The *Cross*, being by the Emperour ‡ *Constantine*, in honour of the *Christian Religion*, ordered no longer to be used as a Punishment, the *Furca* succeeded

* Multa extant Crudelitatis potiùs quàm Severitatis ejus indicia; nam primùm milites qui provincialibus aliquid tulissent per vim in illis ipsis locis in quibus peccaverant in *Crucem* sustulit. *Vulcatius, cap.* 4.

† *Capitolinus in Vit. Opilii Macrini, cap.* 12.

‡ *Cujacius Observ.* 16. 1.

in its place ; which, according to * *Lipſius*, was of two kinds, the *Old* and the *New* ; but the latter not falling within the Deſign of this Treatiſe, I ſhall ſay nothing more of it. The *Old Furca* is ſo called, from being in uſe only among the Antient *Romans*, who divided it into *Pœnalis* and *Ignominioſa*. The Shape of it is very much diſputed : Some Authors ſay, it was a forked Piece of Timber reſembling the Beam of a Wayne like our Letter Y ; others give it another Form. Be that as it will, all agree, that the *ignominious Furca* was a Puniſhment for *Servants convicted of ſmall Offences*, who were forced to carry it upon their Shoulders about the City, expo-

* *Vide Juſti Lipſii lib. De Cruce.*

ſed to the Mockery and Deriſion of all that ſaw them. The * *Penal Furca*, was, when the *Malefactor* having it on his Neck, was led up and down the *Circus*, or other Publick Place, being whipp'd all the way till he died under it, or was releaſed and ſold for a Slave, like *Mattienus*, for † deſerting the Army in *Spain*: But this Puniſhment was ſuppreſs'd, as ‡ *Gothofredus* ſays, firſt, by the Law *Valeria*, and afterwards by the Law *Porcia*.

Another way of puniſhing *Deſerters* and *Fugitives* among the *Romans*, was

* Nudi hominis Cervicem inſeri Furcæ, corpus virgis ad necem cædi. *Sueton. in Vita Neronis, cap.* 49.

† Qui accuſatus apud Tribunos, quod exercitum in Hiſpaniâ deſeruiſſet damnatuſque ſub *Furcâ* diu *Virgis* cæſus, & ſeſtertio nummo væniit. *Liv. Epit. lib.* 55.

‡ *Dig. Tit. De Pœnis, Leg.* 8. §. 22.

burning

burning them alive. * *Hoſtes autem, item transfugæ, ea pœna adficiuntur ut vivi exurantur.* But becauſe by the Law of Nations, Enemies, when taken, are to be preſerved, and not deſtroyed, much leſs in ſo cruel a manner, † *Cujacius* corrects this Paſſage; and inſtead of *Hoſtes autem item transfugæ,* makes it *Id eſt transfugæ.* However, ‖ *Gothofredus* thinks, that Place wants no Amendment; becauſe by the Word *Hoſtes* all *Traytors* that plot, or endeavour the Subverſion of the Government, are underſtood, and are a diſtinct kind of Enemy, who by the Laws are to be burnt alive,

* *Cujacius Obſerv. 6. Obſerv. 27.*

† *Gothofred. ad Leg. 1. Cod. Theod. Tit. De Re Milit.*

‖ *Gothofr. ad Leg. 8. §. 3. Dig. Tit. De Pœnis, Lit. E.*

as

as well as *Deserters* or *Fugitives* from the Army. Such also who conceal'd or assisted *Deserters* in their Escape, or * any that were fit to bear Arms, were condemned to the Flames.

* Actor ejus fundi in quo alienigena, vel idoneus militiæ, vel ante jam traditus latuerit, ultima flammarum animadversione consumatur. *Leg.* 2. *Cod. Theod. De Desertoribus.*

Si quis latebram præbuerit desertori possessionis in quâ latuerit amissione multatus, etiam graviorem sententiam pertimescat. Porrò Actorem flammis subjiciendum esse non dubites. *Leg.* 4. *eod.*

CHAP.



CHAP. VIII.

HItherto, of the *Capital Roman Military Punishments*, which were either *Common* or *Proper*, and reached the *Natural Life* of the Offender. Among which, I have not enumerated several inflicted by the latter Emperours; being rather the Effects of their boundless Power and cruel Dispositions, than proportioned

to

to the * nature of the Crimes, or design'd to dispose Men to Obedience. Of this kind, was that Piece of Barbarity of † *Aurelian*, who commanded one of his Soldiers convicted of *Adultery*, to have his ‡ Feet tied to the Tops of two Branches of Trees bent down, which being suddenly let fly, tore the Offender to pieces. And *Opilius Macrinus* ordered a ‖ *Tribune*, who had suffered his Guards to desert a Post,

* Illa supplicia non ex merito facinorum irrogantur, sed ex libidine ejus qui irrogat quique suis tristissimis moribus indulget. *Salmas. ad Jul. Capitolinum in Opilio Macrino, cap.* 12.

† *Vopiscus in Vit. Aurelian, cap.* 7.

‡ *This Punishment was not of the Emperour's Invention; but* Casaubon *says, came from* Persia. *It is called,* Diasphendonesis. *Vide Montfaulcon's Antiq. Vol.* 4.

‖ Tribunum qui excubias deseri passus est, carpento rotali superadnexum per totum iter vivum atque exanimem traxerit. *Capitolinus in Vit. Opilii, cap.* 12.

to be bound faſt to the Top of a Waggon, and carried ſo a whole Day's March. The ſame Emperour being informed, that Two Soldiers had deflower'd their Landlord's Servant-Maid, immediately cauſed the Bellies of two Oxen to be ripp'd open, out of which the Paunches were taken, and then the Soldiers ſew'd alive in them, the Heads of the Oxen being cut off, that ſo the miſerable Couple might ſpeak to one another as long as their Agony ſuffered them to live. A Puniſhment, ſays * *Capitolinus*, known neither to the Antients nor Moderns, even in Caſes of

* Quum ne *Adulteriis* quidem talia aput Majores, vel ſui temporis eſſent conſtituta ſupplicia. *Capitolinus in Vit. Opilii, cap.* 12.

Adul-

Adultery. But, not to dwell on so disagreeable a Subject, I shall proceed to consider those *Military* Punishments, which affected the Offender's *Liberty*, his *Rights* as a *Citizen*, or his *Body* by *Mutilation*.



Wm. Hogarth Inv. et fec.

CHAP. IX.

THE Firſt of theſe is *Slavery*, *Servitus*, ſo called, not *à ſerviendo* from *ſerving*, as ſome have imagined; but *ſervando*, *ſaving*, or *preſerving*, as *Juſtinian* ſays; becauſe the *Roman* *Emperors were uſed to preſerve and ſell,

Servi autem ex eo appellati ſunt quòd Imperatores captivos vendere, ac per hoc *ſervare*, nec occidere ſolent. *Juſtin. Inſtit. lib.* 1. *Tit.* 3. *De Jure Perſonarum.*

not

not to deſtroy ſuch as they took Captives in War. It was introduced by the † *Law* of *Nations*, and very much cultivated by the *Romans*.

A *Freeman* might be reduced to the State of *Slavery* ſeveral ways. *Juſtinian* furniſhes us with one Example, in a Perſon, who being under Age, ſuffers himſelf to be * ſold into Bondage for the ſake of ſharing the Money. To which may be added, the Caſe of enfranchiſed Perſons, who turned un-

† Servitus autem eſt conſtitutio Juriſgentium. *Juſtin. eod.*

* Cùm liber homo major xx annis ad pretium participandum ſeſe venundari paſſus eſt. *Eod.*

Si manumiſſus ingratus circa Patronum ſuum extiterit, & quâdam jactantiâ vel contumaciâ cervicem adverſus eum erexerit, aut levis offenſæ contraxerit culpam, à Patrono rursùs ſub imperium ditionemque mittatur. *Cod. lib. 6. Tit. 7. De Libert. & eorum Liberis. Leg. 2.*

grate-

grateful to their Patrons. Thus the Emperour † *Claudius* condemned thoſe of whoſe Ingratitude their Patrons complained, to their former Servitude; refuſing to give Sentence againſt thoſe who had enfranchiſed them when their Advocates applied for it. But notwithſtanding this be generally ſpoken by *Suetonius*, *Caſaubon*, upon the Authority of a Law in the *Digeſt*, limits it to One Caſe only; that is, when they became *Informers themſelves*, or *ſuborned Others to be ſo* againſt their *Patrons*. The *Laws*, however, make no ſuch diſtin-

† Ingratos & de quibus *Patroni* quererentur revocavit in ſervitutem advocatiſque eorum negavit ſe adverſus Libertos eorum Jus dicturum. *Sueton. in Vitâ Claudii, cap.* 25.

ction;

ction; but condemn them and their Children, altho' they were in the * *Military Service*, to their priſtine Condition of *Slavery*. But this was not the only Fault for which Soldiers ſuffered that Puniſhment. All that were *ungrateful* to their *Countrey* and the *Government* which protected them, by refuſing to † *anſwer to their Names*, or *appear at the Muſter upon Levies*, were ſentenced as *Traytors* to the *Publick Liberty*, to paſs the reſt of their Lives in *Slavery*, and ſome even after

* Libertinæ conditionis homines vel earum filii etiamſi MILITANTES qui docebuntur ingrati; ad ſervitutis nexum proculdubio reducentur. *Cod. lib. Lig.* 2. *Tit. De Libert. & eorum Liberis.*

† Gravius autem delictum eſt detrectare munus militiæ quam adpetere: nam & qui ad delectum olim non reſpondebant ut proditores Libertatis in ſervitutem redigebantur. *Dig. lib.* 49. *Tit.* 16. *De Re Militari, Leg.* 4. *Sect.* 10.

long

long Service, were for heinous Crimes ſold and made Slaves, as I have before inſtanced in *Mattienus*. When *Fulvius* a Tribune, had taken upon him *in his turn of Duty*, to diſcharge a whole *Legion*, *Poſthumius*, another Tribune of the ſame, gave account of it to the Senate; and purſuing the Men that were diſmiſs'd, brought ſeveral of them back; the reſt were recalled by an Order, and the * *Conſul* had a Warrant from the Senate to put to Sale every Man that did not return, *with all that he was worth.* † *Lampridius* reports of the Emperour *Alexander Severus*, that hearing, a young Soldier

* *Livii lib.* 40.

† *In Vitâ Alex. Severi.*

had

had injured a poor Woman in stealing from her some Goods, he commanded him to be *disarmed, declared a Slave,* and given to the Woman to gain her a Livelihood by his Drudgery. A *Roman* * *Knight* having *cut off the Thumbs* of his two Sons, that they might be incapable of serving in the Army, *Augustus* order'd *him* and his *Goods* to be *sold*; and when he saw the Slave-jobbers greedy of the Purchase, with a design of releasing him again for Money, he gave him to his manumitted Slave, that he might be sent into the Countrey to live

* Equitem Romanum quòd duobus filiis adolescentibus causa detrectandi Sacramenti pollices amputâsset ipsum bonaque subjecit hastæ; quem tamen quod immine-re emptioni publicanos videbat, liberto suo addixit, ut relegatum in agris pro libero esse sineret. *Sueton. in August. cap.* 24.

free. But we muſt remember to diſtinguiſh between *Hominum Servi*, and *Pœnæ Servi*; ſuch as were in a State of Bondage, and obliged to ſerve others in carrying on their domeſtick or other lawful Affairs; and ſuch as were condemned to work in the * Mines, or the High-ways, from which *Soldiers* were by the † Laws exempted.

Before I leave this Chapter, it may not be amiſs to take notice, that it was a common thing with the *Romans*, whatever is ſaid of their Bravery, to diſqualifie themſelves for Military Service, by *cutting off* their *Thumbs*; and

* Ad metallum, aut ad viarum munitiones. *Sueton. in Calig. cap.* 27.

† *Dig. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 3. §. 1.

therefore

therefore ‡ *Ammianus Marcellinus* ſpeaking of the Diſpoſitions and Manners of the *Gauls*, ſays, that none of them ever *cut off* their *Thumbs* to make themſelves uncapable of Military Duties as the *Italians* had done; and accordingly there were ſeveral Laws made by the *Romans* to reſtrain ſuch Cowardly Practices. * *Trajan* made one, *That the Perſon who diſabled his Son when any Levy was made for War, ſo that he could not be fit for Military Service, ſhould be baniſhed.* And

‡ Nec illorum quiſquam ut in Italiâ munus Martium extimeſcens pollicem ſibi præſcidit quos joculariter *Murcos* appellant. *Ammian. lib.* 15. *ſub fine.*

* Eum qui filium debilitavit delectu per bellum indicto, ut inhabilis militiæ ſit; præceptum Divi Trajani deportavit. *Dig. Lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 4. §. 12.

there is another of * *Conſtantine*'s extant to this purpoſe: *That the* Sons *of* Veteran Soldiers *fit for the ſervice of the War, ſome of which have refuſed to liſt themſelves out of Sloth and Lazineſs, and others have been ſo cowardly as to maim themſelves only to avoid that Duty; if they be thought uncapable to ſerve in the Army, ſhall be forced to attend the moſt ſervile Offices about the Court. He that thinks to excuſe himſelf, from bearing Arms, by* cutting off his own Fingers, *ſhall not eſcape what he deſigned to avoid by it; but ſhall with that Mark of Infamy, be forced to undergo the* Drudgery of the Service, *ſince*

* Si ad Militiam inutiles reſectis digitis judicentur curialibus muneribus atque obſequiis adgregari. *Cod. Theod. Leg.* 1. *Tit. De Filiis Milit. apparat. & vet. Et De Tyronibus, Leg.* 4. 10.

he

he refused the Honour *of it.* But the severest Law against these Cowards, is that in the *Digest*; *If any one, to avoid being press'd for the War, hath, as he thinks, secured his Body from Danger, by* cutting off his Fingers, *he shall be condemned to be* burnt; *and the Master that doth not hinder him, shall incur a severe Penalty.* But from the Close of *this Law*, 'tis likely it was designed only against *Slaves*, who upon sudden Emergencies were allowed to carry Arms. The other *Laws* comprehended *Freemen.* These pusillanimous Fellows were, by way of Ridicule, called *Murci.* And some learned Men have thought, that our Modern *French* Word *Poltron* comes from this *Pollicum truncatione, cutting off the Thumbs.*

But

But Monſieur * *Menage* and † *Puffendorf* likewiſe, ſeem to be of opinion, it is rather derived from the *Italian* Word *Poltro*, which ſignifies a Fellow that indulges himſelf at home upon his Couch. However, 'tis not to be diſputed that the *Italian* had its Original from theſe *Pollicum truncatoribus*, as exactly deſcribing, and agreeing with the Character they deſerve.

* *In Origin. Ling. Franc.*

† *Puffendorf. Tranſlat. Book* 8. *cap.* 2.

CHAP.



CHAP. X.

Banishment, in *Latin Exsilium, ab ex & solo*, is properly the *Change of a Man's Place of Abode or Countrey, by way of Punishment*; such as had transgress'd the *Laws*, being commanded to leave their Countrey, and go to some other. Hence is the *Greek* Proverb γῆν πρὸ γῆς, *terram pro terrâ*. There were *two sorts* of *Banishment* among

among the *Romans*, the *Voluntary* and the *Neceſſary*: But the Firſt being rather a wiſe and timely * Retreat, and the free Choice of the Perſon, who left his Countrey to avoid the poſſible Severity of a formal Sentence of *Baniſhment*, is ſcarcely to be called a *Puniſhment*, nor is it to my purpoſe.

The *Neceſſary* or *Forced Baniſhment* here ſpoken of, was of three kinds; either from † *certain Places*, or from *all*; which latter was called *Latafuga*, or to *one only*. Concerning which

* Hic enim timens ne poſteà privato ſibi eadem illa cum bonorum amiſſione additaque alia inſuper ignominia acciderent, abdicavit ſe Conſulatu rebuſque ſuis omnibus Lavinium tranſlatis civitate ceſſit. *Liv. lib. 2.*

† Aut certorum locorum interdictio, aut *Lata fuga* ut omnium locorum interdicatur, aut in inſulæ vinculum, id eſt, relegatio. *Marcianus l. 5. d. De Interdict. & Releg.*

there

there is great variety of Opinions among the *Lawyers*.

Persons of all conditions, as well *Men* as *Women*, were liable to this Punishment, as * *Suetonius* and *Ovid* both testifie. But, to bring it home to the Point in hand, *Livy* tells us, that the Remains of the Army after the Battel of *Cannæ* were all banish'd to *Sicily*, there to continue as long as the War lasted in *Italy*. And *Ammianus Marcellinus* relates, that ‡ *Romanus* and *Vincentius*, both *Tribunes*, were sent into Banishment for aiming at Matters above

* *Sueton. in Vitâ Augusti, c.* 55. *Ovid. Trist.* 1. 1. *Ver.* 193.

† *Vide Fabrum in Semestr.* 11. *cap.* 5.

‡ *Romanus* quinetiam & *Vincentius* Scutariorum scholæ, primæ secundæque *Tribuni* agitâsse convicti quædam suis viribus altiora, acti sunt in exilium. *Ammian. Marcell. lib.* 22.

their ſpheres. When *Julius Cæſar*'s Army was dejected, at the Report of the vaſt Number of *Juba*'s Forces, he ſpake to them to this effect: *Be* * *aſſured the King will be with us in a ſhort time; therefore let none among you take upon them to mutter or argue about it; but believe what I ſay, or elſe I ſhall certainly take care to have them ſhipp'd in ſome old ſhatter'd Veſſel, and commit them to the Mercy of the Winds and Waves.* But this kind of *Baniſhment* was more frequently uſed in their Naval Service, as † *Schefferus* inſtances out of *Strabo*,

* *Suetonius in Jul. Cæſar, cap.* 56.

† *Schefferus de Milit. Naval. Vet.* 4. *c.* 2.

CHAP.



CHAP. XI.

BReaking of the *Legs* was a *Roman* Punishmennt for *Slaves* and Persons of inferiour Degree. *Thallo*, by Command of * *Augustus*, had his Legs broken, for discovering the Contents of a Letter, for a Sum of Money;

* *Sueton. in Vitâ August. cap.* 67.

yet 'twas ſometimes inflicted upon *Freemen*, and thoſe too of the Firſt Rank. Thus *M.* * *Marius* in whoſe honour the *Romans* erected ſeveral Statues in their Streets, had his *Legs broken* by Order of *L. Sylla*: And † *Ammianus* tells us of certain Soldiers, who met with the ſame Fate for not following their proper *Enſigns*. In exacting which Puniſhment, I mean *Mutilation*, the *Romans* generally obſerved this Rule, of making the Parts ſuffer moſt, which were principally concerned in the Offence; as, by *cutting off* the *Hands* of ſuch as were guilty of *Forgery*, *caſtrating Adulterers*, and

* *Seneca de Irâ*, 3. *cap.* 18.

† *Ammianus*, *lib.* 23.

the like. So *Fugitives* were condemned to have their *Legs cut off*, that their Puniſhment might be more conſpicuous. *Avidius Caſſius* condemn'd many *Deſerters* to have their *Hands* and *Legs cut off*, giving this reaſon for it, * That the living miſerable Example of an Offender was of greater ſervice than that of his Death. *Vulcatius Gallicanus* ſays in the ſame Emperour's Life, that he was the Inventer of *cutting off the Hands* and *Legs* of *Deſerters*. But *Valerius Maximus*, under the Head of *Military Diſcipline*, ſhews, that † *Fabius Maximus*, who comman-

* Multis Deſertoribus manus excidit ac poplites, dicens majus eſſe exemplum viventis miſerabiliter criminoſi quàm occiſi, *&c.* *Liv. lib.* 25.

† Omnium qui ex præſidiis Romanorum ad hoſtes transfugerant, captique erant, manus abſcidit ut truncâ præſe brachia geſtantes metum defectionis reliquis injicerent. *Valer. Max. lib.* 2. *cap.* 7.

ded

ded the *Roman* Army againſt *Hanibal* above three hundred Years before, *cut off the Hands* of all that had deſerted from the *Roman* Garriſons to the Enemy, as ſoon as they were retaken, *that ſo by the miſerable Spectacle of their mangled Limbs they might infuſe into their Comrades an Abhorrence of the like Crime.* We find alſo in * *Frontinus*, this was the Puniſhment of ſuch as robb'd or ſtole any thing from their Fellow-Soldiers, unleſs by way of Favour, they were only ſentenced to have a *Vein opened in principiis*, that is, at the Head-Quarters; Which being the Repoſitory of their

* *M.* Cato memoriæ prodidit, in furto comprehenſis, inter commilitones dextras eſſe præciſas, aut ſi lentius animadvertere voluiſſent, *in principiis* ſanguinem miſſum. *Frontin. Stratagemat.* 4. 1.

Camp,

Camp, *Deities*, *Eagles* and other *Enſigns* were accounted ſacred, and, as * *Feſtus*, and after him *Lipſius*, will have it, the Place where Military Puniſhments were for the moſt part exacted. But † *Cuperus* ſtartles at the Impiety, and will by no means be induced to believe the *Romans* could be ſo wicked as to affront their Gods with ſo filthy a Spectacle: Yet he allows, *Puniſhments* of *Shame* were inflicted *there* in the ſight of the *Tribunes*, *Centurions* and *Guards*. This Difficulty is ſolved by ‡ *J. Perizonius*. In the *firſt Ages*,

* *Feſtus in V. principalis porta.* Atque ibidem locorum pleræque exactæ pœnæ militares. *Lipſius de Milit. Rom. Lib.* 5. *Dial.* 18.

† *Grisb. Cuperus Obſerv. l.* 4. *c.* 19.

‡ *Jac. Perizonius Diſſ.* 1. § 23. *& ſeqq.*

ſays he, *common Soldiers* that had offended capitally, were puniſhed *within* the *Camp*, as *Malefactors* were *in* the *Comitium* at *Rome*. But when Publick Examples grew to be more frequent, and thereby the Benefit expected from them abated, the Place of Execution was removed from the *Inſide* to the *Outſide* of the *Camp* and *City*,

CHAP,

CHAP. XII.

Letting of Blood is a Military Punishment taken notice of by *Frontinus* and likewise by † *Aulus Gellius*; who not being able otherwise to account for the Reason of it, imagines it was first introduced by way of Remedy for those that were overstock'd with Blood, or any ways lethargically inclined; and herein he is followed by many of the ‡ Learned, amongst whom is * *Alexander ab Alex-*

† *Gellius Noct. Attic.* 10. 8.

‡ *Faber Semestr.* 1. 17.

† *Alex. ab Alex. Gen. Dier.* 11. 13.

andro; becauſe, ſay they, the Animal Spirits are clogg'd by a Superfluity of Blood; which being drawn off, are reſtored to their Motion, and the Patient to the free Exerciſe of his Reaſon. But how can it be thought, the *Romans* ſtudied the *Principles* of *Phyſick* in the Execution of their Military Puniſhments? * *Muretus* contradicts *Gellius*, and thinks, it was rather That ſuch as were unwilling to *ſacrifice* their *Blood* in the *Defence of their Countrey*, ſhould be compelled to loſe it with *Shame* and *Diſhonour*. But, ſays *Lipſius*, how could that be, when *Thieves*, who were under no ſuch Obligation, were puniſh'd after the ſame manner?

* *Muretus Var. Lect.* 13.

To this it is answer'd by *Thysius* in favour of *Muretus*, that originally it was a *Military Punishment*, tho' afterwards applied to Crimes against the *Civil Government*: And he resolves the reason of it into this, That such as were *sparing*, or *fearful* of *shedding* the *Enemy*'s *Blood*, should be condemn'd to pay for it by a *disgraceful Loss* of their own. * *Valtrinus* concurs with *Thysius*; and *Gronovius* in his Edition of *Aulus Gellius*, seems to think, it was once the only Punishment of Disgrace used in the *Roman* Armies: So that it grew a Proverb, *Dandum esse invidiæ sanguinem*; and by the Invention of other Marks of Infamy, at length became

* *Valtrinus lib. 6. cap. 8.*

peculiar to the Caſe of *Cowardice* and *Fear.* But, ſays *Sichterman*, ſince every one is at liberty to ſpeak his mind, I confeſs, the Reaſon which *Lipſius* gives, ſeems to me to have moſt Weight in it, *viz. That it was done in token of ſome greater Puniſhment incurr'd, the extremity whereof being remitted, was ſtill expreſs'd and figur'd out by the Effuſion of a little Blood,* as we turn Delinquents out of the Service with a Rope about their Necks, to ſhew they deſerv'd to be hanged.

CHAP.



CHAP. XIII.

THE two kinds of *Beating*, *viz.* *Fustigatio* and *Castigatio* are sufficiently explained in the Chapter treating of the *Fustuarium*. I come now to speak of the other sort of *Castigation*, distinguished by the Name of *Fustium Admonitio*; which, as is shewn before, differs widely from the *Fustuarium*, and is a far less Punishment

Puniſhment than *Flagellatio*, or *Whipping*. And tho' it has been already ſaid, that the *Caſtigatio* was executed with *Rods*, it muſt be taken in a general ſenſe: For when *Soldiers* were condemned to ſuffer it, they uſed *Sticks* or *Cudgels*, and not * *Rods* or *Scourges*; which were ſeldom given to a Soldier, unleſs Beheading was to enſue: Tho' there are ſome Inſtances of *Whipping* being followed with † *Degradation*.

* *Virgarum contumelioſa verbera. Valerius.* Et rarò etiam in militiâ legas, rarò inquam, niſi ubi mors à ſecuri conſecuta, & hæ ſolenniter tunc præiverunt. *Lipſ. de M. R. lib.* 5. *Dial.* 18.

† Jam C. Cotta, P. Aurelium Pecuniolam ſanguine ſibi junctum quem obſidioni Liparitanæ ad auſpicia repetenda Meſſanam tranſiturus præfecerat Virgis cæſum gregalis militiæ munere inter pedites fungi coegit, quod ejus culpa agger incenſus & pene caſtra fuerant capta. *Valer. Max. lib.* 2. *c.* 7.

Their

Their *Battoons*, *Sticks* or *Cudgels*, were of different Materials; as *Oak*, *Elm* or *Beach*; but those used upon *Soldiers by way of Admonition*, were of the *Vine-Tree*, which, to use * *Pliny*'s Words, grace the Punishment, and therefore were reserved for the Backs of *Natural-born Romans*. When any Soldier, says *Livy*, speaking of *Scipio*'s Reformation of the Army, was discovered † straggling upon the March, if a *Roman*, his Punishment was, to be corrected *Vitibus*, *with Vine-Twigs*; if a Foreigner, *Fustibus*, *with Cudgels* of any kind. This Use of the *Vine* is frequently to be met with in the

* Pœnam ipsam honorat. *Plin. Hist. Nat. l.*14. *c.*1.

† Quem militem extra ordinem deprehendit, si Romanus esset, *Vitibus*; si Extraneus, *Fustibus* cecidit. *Livius*, *lib.* 57.

Roman

Roman Authors. And tho' *Sigonius* in his Notes upon this Paſſage of *Livy* corrects the old Reading, and ſays inſtead of *Virgis*, it ought to be *Fuſtibus*; yet he cannot thereby intend the *Fuſtuarium* deſcribed by *Polybius*; becauſe that ended in the Death of the Tranſgreſſor: Which was manifeſtly otherwiſe in this Caſe; the only difference in this Puniſhment being, that one was beaten *Vitibus*, the other *Fuſtibus*. Now, there is no Hiſtorical Evidence, that a *Roman* Soldier was ever *beaten to death* with the *Vine*. *Polybius*, indeed, touches upon the *Caſtigatio*, but 'tis very ſlightly; he ſays no more, than that the *Tribunes* had a Right of *beating*; and confounds the Correction given by

the

the *Vine*, with the *Fustuarium*. * *Cottereus* falls into the same Errour, and produces indiscriminately, Examples of both these kinds of Punishment.

The giving of this Correction properly belonged to the *Centurions*: Whence † *Tacitus* tells a Story of one, whom the Soldiers had nick-nam'd *Cedo alteram*, *Give me another*; because when he had broken one *Vine-Wand* upon the Soldier's Back, his manner was to call aloud, *Give me another*, and when that was broken, *another*, Hence we learn, that the *Vine-Wand*

* *De Jure & Privilegiis Milit. lib.* 3. *cap.* 17.

† Centurio, Lucilius interficitur cui militaribus facetiis vocabulum *Cedo alteram* indiderant, quia fractâ Vite in tergo militis, alteram clarâ voce, ac rursus aliam poscebat. *Tacit. Annal.* 1. *cap.* 23.

was the *Centurion*'s *Enſign* of *Diſtinction*; and ſo it is taken by the *Scholiaſt* upon *Juvenal*; who in Explanation of this Paſſage, —*Vitem poſce libello*, has this Paraphraſe, *Id eſt, ut Centurio fias, da Libellos*; that is, *Prefer a Petition to be made a Centurion:* For ſuch as had the Privilege to carry the *Vine*, were *Centurions*; and the Office it ſelf is often expreſs'd by the Word *Vitis*, in *Spartianus*, *Tacitus*, *Martial* and *Lucan*. Sometimes it was given as our Signs Manual are, to * ſecure the Reverſion of an Employment upon Death or Diſmiſſion.

* *Caſaubonus ex Euſebio. Vide Sichterman De Pœnis Militaribus, cap.* 12.

Among

Among many other Offences corrected this Way, was * *Negligence in obeying lawful Commands,* † *Loitering behind,* and *straggling* upon the *March.*

† Centurionum in manu Vitis, & optimo præmio tardos ordines ad lentas aquilas perducit, atque etiam in delictis pœnam ipsam honorat. *Plin. Nat. Hist. lib.* 14. *cap.* 1.

† Nodosam posthæc frangebat vertice Vitem
Si lentus pigra muniret castra dolabra.
Juven. Sat. 8. *v.* 48.



CHAP. XIV.

I Come now to ſpeak of Puniſhments attended with *Infamy*, of which the *Miſſio ignominioſa*, or *ſhameful Diſcharge* was the Chief.

The *Romans* had Four Ways of Diſmiſſing Men from the Service. The *firſt* was, *When they had ſerved out their time appointed by the*

* *Law*,

* *Law*, and this was called *Justa Missio.* The *second* was, *for good and sufficient Reasons*; *as, when the Party was wounded, lame, or so infirm, that he could not serve longer*: This they called *Missio causaria*, *an occasional Dismission.* The *third* was, *When Men were turned out of the Army* for *Crimes*; and this they called *Missio ignominiosa, a shameful Dismission.* ‡ *Lipsius* adds the *Fourth*: Which was, *When a General*

* Quia Lege certus annorum numerus definitus, nec sumere aut ponere militiam volentibus erat. *Lips. De Milit. Rom. lib.* 5. *Dial.* 19.

† Missionum generales causæ sunt tres; *Honesta, Causaria, Ignominiosa. Honesta* est, quæ tempore militiæ impleto datur. *Causaria*, cùm quis vitio animi vel corporis minus idoneus militiæ renunciatur. *Ignominiosa* causa est, cùm quis propter militare delictum sacramento solvitur. *Dig. Lib.* 49. *Tit.* 19. *De Re Milit, Leg.* 13. §. 3.

‡ *Lib.* 5. *De Milit. Rom. Dial.* 19.

or *Tribune* gave *a Soldier his Diſcharge out of* Grace *and* Favour. And * Sir *Charles Turner* ſays, ſometimes *for Money*: But this, as illegal and prejudicial to the Service, was often reſcinded by the *Cenſors*. But as it was always conſidered as part of the † Power and Privilege of a *General* to diſcharge whom he thought fit. ‡ *Ulpian* allows this Diſcharge out *of Favour*, to be *Honeſta Miſſio*, when it is done without Reward or proſpect of private Gain.

* *Pallas Armata, Book* 2. *Ch.* 24.

† Miſſorum quoque cauſas ſeſe cognituros eſſe, & quorum ante emerita ſtipendia gratioſa Miſſio ſibi viſa eſt eos milites fieri juſſuros. *Liv. lib.* 43.

‡ Multa genera ſunt Miſſionum, *Honeſta*, quæ emeritis ſtipendiis, vel antè ab Imperatore indulgetur. *Digeſt. lib.* 3. *Tit.* 2. *De his qui notantur infamia, Leg.* 2. §. 2.

To return to the *ignominiosa Missio*, which alone relates to my Design. * *Macer* defines it to be, *when a Man for a Crime committed, is discharged of his* Military Oath. He says nothing of the Words *ignominiæ causâ*, which † *Ulpian* thinks absolutely necessary, and that no Soldier ought to be turned out of the Service, without mentioning the Cause of his Dismission. Yet *Ulpian* in the same Law admits, there is no occasion of that Addition, provided he be stripp'd of his Arms and all

* Cùm quis propter militare delictum sacramento solvitur. *Dig. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 13. §. 3.

† *Ignominiosa* autem *missio* toties est quoties is qui mittit, addit nominatim *IGNOMINIÆ* causâ se mittere; semper enim debet addere *cur miles mittatur*. Sed si eum exauctoraverit, id est, insignia militaria detraxerit, inter infames efficit licet non addidisset *IGNOMINIÆ* causâ se eum exauctorâsse. *Dig. lib.* 3. *Tit.* 2. *De his qui notantur infamia. Leg.* 2. §. 2.

Badges

Badges of Military Honour taken from him. There are Inſtances to be brought of both kinds, which, for the clearing of this Point, may not impertinently be inſerted here. * *Publius Rutilius*, in the War he made upon the Fugitives in *Sicily*, diſmiſſed his Son-in-law for ſuffering a Place of Strength to be loſt by Negligence. And *Cæſar* in *Africa* diſcharged † *Fonteius*, becauſe he was *ſeditious* and *a bad Citizen*. There is no mention in either of theſe Caſes, that they were

* *P. Rutilius* Conſul eo bello quod in Siciliâ cum fugitivis geſſit. Quintum Fabium generum ſuum, quia negligentiâ Taurominitanam arcem miſerat, provincia juſſit decedere. *Valer. Max. lib. 2. cap. 7. De Diſciplinâ Milit.*

† Itemque te A. Fontei, quòd Tribunus militum ſeditioſus maluſque civis fuiſti, ab exercitu dimitto. *Hirt. de Bello African.*

turned

turned out of the Army *ignominiæ causâ*; yet 'tis not to be doubted, they were obliged to leave their Arms behind, and divest themselves of all Military Ensigns before they were sent away. Of the other kind, *Hirtius* gives us an Instance, in the *African* * *War*; where he describes *Cæsar* discharging *Avienus*; and after enumerating several Crimes of which he was guilty, saying to him, *Ob eas res* IGNOMINIÆ *causâ ab exercitu meo te removeo: For those things I turn thee out of my Army with Shame.*

* Cæsar postero die de suggestu convocatis omnium Legionum Tribunis Centurionibusque C. Aviene quòd in Italiâ milites populi Romani contra Remp. instigâsti, rapinasque per municipia feciſti; Ob eas res IGNOMINIÆ CAUSA, ab exercitu meo te removeo, hodieque ab Africâ abesse, & quantum potes proficiſci jubeo. *Hirt. loc. cit.*

* *Suetonius* alſo reports, that *Caligula* diſmiſſed the Commanders of ſome auxiliary Forces *cum ignominiâ*, becauſe they had not repaired to the Place of *Rendezvous* by the time appointed.

From theſe Inſtances 'tis plain, that not only private Soldiers, but Officers of all Degrees, were ſubject to this kind of Diſmiſſion: Nay, † *Pomponius* includes the *General* himſelf,

* Poſtquam caſtra attigit, ut ſe acrem & ſeverum Ducem oſtenderet Legatos qui auxilia ſerius ex diverſis locis adduxerant, cùm *IGNOMINIA* dimiſit. *Sueton. in Vit. Calig. cap.* 44.

† Quod ait Prætor: *Qui ab exercitu dimiſſus erit:* Dimiſſum accipere debemus militem caligatum, vel ſi quis alius, uſque ad Centurionem, vel Præfectum Cohortis, vel Alæ, vel Legionis, (vel Tribunum ſive Cohortis ſive Legionis) dimiſſus eſt. Hoc amplius, Pomponius ait, etiam eum qui Exercitui præeſt, licet Conſularibus inſignibus utitur *ignominiæ causâ*, ab Imperatore miſſum hâc notâ laborare. *Dig. lib.* 3. *Tit.* 2. *De his qui notantur infamia, Leg.* 1.

who

who was accounted infamous, if diſmiſſed from his Command in this manner. Nor could there be a more grievous Puniſhment inflicted upon Men of Spirit: For it was generally attended with *perpetual Baniſhment* from the † *Army* and *Court*, unleſs the Sentence made it ‡ *Temporary*; and then the *Infamy* vaniſh'd upon the Expiration of the time limited.

This *ignominious Diſmiſſion* is in the *Lawyers* and *Hiſtorians* frequently expreſs'd by the Word *Exauctoratio*; and it ſeems to be the true Meaning

† Et is qui *Ignominiâ* miſſus eſt, neque Romæ, neque in ſacro Comitatu agere poteſt. *Digeſt. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 13. §. 3.

‡ Quibus poſthac ordini ſuo vel advocationi ad tempus interdicetur poſt impletum temporis ſpatium non prorogabitur infamia. *Cod. lib.* 10. *Tit.* 59. *De his qui in exſil. Leg.* 1.

thereof, notwithſtanding † *Lipſius* confines it to another Senſe; that is, *When a Legion was disbanded, yet not diſperſed, but kept together under their proper Colours, till they had Lands ſet out, or other Rewards given them for their long Service*; During which Expectation they were exempted from all kind of Duty, except Fighting againſt the Enemy. It is not to be diſputed, but that *Exauctoratio* does likewiſe include this Caſe, and that by *Exauctorati*, we are often to underſtand *Subſignani Veterani & Vexillarii*; yet according to ‡ *Suetonius*, *Ulpianus* and many others, this is not its proper

† *Lipſius, De Milit. Roman. lib.* 5. *Dial.* 19.

‡ *Vidend. Turneb. adverſ. lib.* 2. *cap.* 3.

ſignification:

signification: For excepting a few Examples, which prove its meaning to be as *Lipsius* and * *Valtrinus* explain, all the rest evidently relate to the *Ignominious Dismission*. Thus † *Ulpian* uses *Exauctorare*, for *Insignia militaria detrahere*; and he is said to be ‖ *exauctoratus, qui militia remotus castris ejicitur, Who is discharged of the service, and turned out of the Camp.* And ‡ *Lampridius* in the Life of *Alexander Severus, He was so severe, that sometimes*

* *Valtrinus, lib.* 6. *cap.* 8.

† Sed & si eum *exauctoraverit*, id est, insignia militaria detraxerit, inter infames efficit. *Dig. lib.* 3. *Tit.* 2. *De his qui notantur infamia. Leg.* 2. §. 2.

‖ *Dig. lib.* 40. *Tit.* 12. *De liberali causâ. Leg.* 29. *Pr.*

‡ Severitatis tantæ fuit in milites, ut sæpe Legiones integras *exauctoraverit. Lamprid. in Vitâ Alexandri Severi, cap.* 52.

be

be diſmiß'd (with Infamy) Whole Legions. * *Suetonius* ſays, *Auguſtus exauctoravit*, *disbanded* certain *Cohorts*, without giving them the Rewards of their long Service: But in this caſe there was no *Infamy*; which is a third Signification different from both the former, applicable to the Word *Exauctoratio*. But we ſhall often find theſe Expreſſions, † *Cingulo privari, Matriculâ eximi, Sacramento ſolvi, & Exui*, uſed for *Exauctorare*, eſpecially in the *Theodoſian* Code.

It is obſerved from *Ulpian*, that on theſe occcaſions of *diſmiſſing* with

* Citra commoda emeritorum præmiorum exauctoravit Cohortes. *In Vitâ Auguſti, cap.* 24.

† *Vide Paratit. Gothofredi ad lib.* 8.

Infamy,

Infamy, the Offender was divested of his *Insignia militaria, the Badges* of his *military Profession.* * These in a *common Soldier*, were his *Arms* and *Armour*, in a subaltern *Officer* or chief *Commander*, both *Armour* and *Ensigns*, as also the *Belt* or *Girdle* with which they girt themselves about, in order to be the more disengaged and active against the Enemy; *it being customary for the* Romans, *when they went about business, to shorten and gird up their Cloaths.* Hence *cincti* is often used for † *Milites, Soldiers*, or Men of *Activity*, and *Discincti* for *Peasants*, or *lazy sluggish Fellows.* In like manner,

* *Casaubonus ad Sueton. Augusti, cap.* 24.

† Milites verò & fœderati qui eis post dilationem observaverint non solùm MILITIA spoliabuntur, sed etiam ultima sustinebunt supplicia. *Novel. 116. cap.* 1.

we ſhall frequently find * *Cingulum* to ſignifie the ſame as *Militia*, and *è converſo*. Thus we read, ſuch as employed themſelves in private Service, were firſt *Militiâ*, i. e. *Cingulo ſpoliati*, deprived of their Place in the Army, and then put to death: So jealous were the *Romans* of their Soldiers applying that Time and Labour which they had devoted to the Service of the Publick, in proſecuting either their own, or other Peoples private Affairs.

* His quidem quibus indultum hactenus demonſtratur quo binis aut ternis pluribuſque mereantur CINGULIS, & ſeq. (ut dictum eſt) binis pluribuſque MILITIIS. *Cod. lib.* 12. *Tit.* 34. *Qui Milit. poſſunt. Leg.* 5.

CHAP.



CHAP. XV.

THE taking away of the *Military Belt* or Girdle, spoken of in the foregoing Chapter, was sometimes Temporary, and made *Part* only of the Offender's Punishment, who was at the same time disgrac'd some other way, as * *Calpurnius Piso* punished *Titius*

* *Frontinus, lib. Stratagemat.* 4. *cap.* 1.

an *Horſe-Officer*, by commanding him to ſtand barefoot at the Head-Quarters from Morning till Night, with his Gown hanging about his Heels, and to abſtain from going to *Baths* and *Entertainments*. *Suetonius* alſo mentions the Puniſhment of *ſtanding before the* General's *Tent in a ſlovenly Dreſs*, wherein they were likewiſe upon ſome occaſions obliged to *dig in the Trenches*, or *cut Hay*, as † *Plutarch* tells us, *Lucullus* ſerved thoſe that had run away, making them *throw up a Trench of twelve Foot deep in that Garb*, the whole Army all the while looking upon them. And ſometimes they

† Reverſus Lucullus eos qui ceperant fugam de more notavit, ac foſſam pedum duodecim diſcinctos, aſſiſtente & ſpectante exercitu ducere juſſit. *Plutarch. in Lucullo, interprete Xylandro.*

were

were condemned *to* * *ſtand before the General's Pavilion in the ſame Dreſs, with long Poles in their Hands, or Turfs upon their Heads,* for a whole Day, and often *bare-footed,* that ſo being expoſed in that deformed Condition to the View of the whole Army, their Puniſhment might be more conſpicuous and exemplary.

* Pro cætero delictorum genere variis ignominiis affecit, ut ſtare per totum diem juberet ante Prætorium, interdum truncatos, diſcinctoſque, nonnunquam cum decempedis, vel etiam ceſpitem portantes. *Sueton. in Vitâ Auguſti, cap.* 24.



CHAP. XVI.

ACcording to the *Roman* Method of *Encamping*, not only every *Legion*, but every *Century* and *Decury*, had a particular Spot of Ground assigned them to pitch their Tents in, which was laid out, in * proportion to

* Inde Legionibus locum suum dat & ostendit quâ formâ, prout plus minusve Legionum vel auxiliorum fuerit, Cohortes Legionariæ tendant. *Shelius ad Hyginum, pag.* 1. *& seq.*

the

the Number of Forces in the Army. But if any were convicted of an Offence, they were *ignominiæ causâ*, by way of Disgrace obliged to *change* their *Quarters*, and *remove to some other Place*, as if they were not worthy to associate with their old Comrades. * Thus, the *Soldier* deputed to speak for the rest of the Army that were confined to *Sicily*, for running away at *Cannæ*, among other Arguments to shew the Hardship of their Case, mentions several Defeats the *Roman* Armies had received, and yet none of them were so severely punished. *They*, says he, *had only their Arms changed for worse, their Rank in the Battel changed,*

* *Livius, lib.* 25.

and

and their Place in the Camp altered: Sometimes Offenders were condemn'd *to lye without the Trenches of the Camp upon the* bare Ground, *expoſed to the Inſults of the Enemy.* Thus * *Livy*; *The Companies which had loſt their Enſigns, were left on the* bare Earth *without the* Rampiers, *deſtitute of Tents or other Cover.* In this manner the Soldiers that were overcome, and forced by † *Hanibal* to paſs under the Yoke, upon their Return to the Army, were commanded by the Conſul *Otacilius Craſſus* to *pitch their Tents* on *the Outſide of the Camp,* in order by that defenceleſs Situation, to inure them

* *Lib.* 10.
Frontinus, Stratagemat. lib. 4. *cap.* 1.

† *Lib.* 2. *cap.* 7.

to Danger, and create in them the Resolution they wanted. To this purpose see *Valerius Maximus* and * *Tacitus*; where *Corbulo* orders *Pactius* and the rest of the Officers and Soldiers under his Command to *take up their Quarters without the Camp.* But this Disgrace was † Temporary, and continued no longer than the *General* pleased, or the Delinquents had wiped

* Rupto Imperio, congressus cum hoste funditur, quod graviter Corbulo accepit, increpitumque Pactium, & Præfectos militesque tendere omnes extra Vallum jussit. *Tacit. Annal.* 13. *cap.* 36.

† Domitius Corbulo in Armeniâ duas Alas & tres Cohortes quæ ad Castellum initio hostibus cesserant, extra Vallum jussit tendere donec assiduo labore & prosperis excursionibus redimerent ignominiam. *Frontin. Stratagem. lib.* 4 *cap.* 1.

Appii Claudii sententia Senatus eos qui à Pyrrho rege Epirotarum capti, & postea remissi erant, omnes extra Vallum jussit tendere, donec bina hostium spolia singuli referrent. *Frontin. eod.*

off

off their Shame by ſome brave Action againſt the Enemy.

On ſome occaſions they were utterly diſmember'd from the Army, and ſent to *work* in the *Fortifications*, or to † *garriſon Towns*; and if in Winter-Quarters at the time the Offence was committed, they were condemned to *paſs the Seaſon under* * *Huts or Tents in the Field*, and not to build the ſame nearer the Garriſon or any other

† Cuſtodia caſtrorum non honoris ſed oneris exiſtimatur. *Stewechius, ex Diomede Grammatico, ad Veget. lib.* 3. *cap.* 4.

* P. Valerio Conſuli Senatus præcepit exercitum ad Syrim victum ducere Serinum, ibique caſtra munire & hiemem ſub tentoriis exigere. *Frontin. Stratagemat. lib.* 4. *cap.* 1.

Additum etiam virorumque ignominiæ eſt, NE IN OPPIDIS HYBERNARENT, neve Hybernâ propius ullam urbem decem millibus paſſuum ædificarent. *Liv. lib.* 35.

Town,

Town, than ten thousand Paces : Which Punishment some think, was unknown before the *Romans* laid Siege to the City of the *Veii*, the Army having never before that time winter'd in the Field.

Again, Delinquents were, by way of Punishment, ordered *to march among the Captives, with the Baggage*, as Supernumeraries. Thus * *Julianus* punished some Horsemen of the *Tertiaci* for deserting the Legions, having first *taken from them their Colours*, and *broke* their *Spears* : For tho' such as were really sick or disabled, might, without Imputation of Infamy, go along with the Baggage ; yet those

* *Ammianus Marcellinus, lib.* 25, *cap.* 1.

that pretended Diſability, to avoid the Fatigue and Duties of honeſt Soldiers, were diſmiſs'd the Service, without Paſs or Diſcharge; by which means they were rendred infamous, the * Law preſuming in that caſe they were ſent away for ſome diſhonourable Action.

It was alſo a Puniſhment of Shame to be *degraded*, which they called *Militiæ mutatio*. This was, *when a Trooper had his Horſe taken from him, being compelled to ſerve on Foot*; or, *when a Foot-Soldier from a ſuperiour Station was reduced to an inferiour*: For, as they had ſeveral Degrees

* Et ſi ſine ignominiæ mentione miſſi ſunt, nihilominùs ignominiâ miſſi intelliguntur. *Digeſt. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 13. §. 3.

of

of Promotion; so every one was preferred or degraded, according to his Behaviour: The *lowest* were the *Tyrones* and *Caligati*, who were raw new-listed Centinels, and subject to many arbitrary private Services imposed by their Officers, till time or some brave Exploit redeemed them from that Drudgery, and put them into the List of the *Beneficiarii* or *Munifices*, as they were anciently called. This Degradation was either to the very next step below, or to the bottom of all; as, suppose a Tribune was to be *gradu dejectus*; this reduc'd him to be * *Primicerius*, or First Centurion: If

* *Primicerium* vocârunt, primum seu priorem locum tenentem. Divus Augustinus sanctum Stephanum *Primicerium Martyrum* nuncupavit. *Stewechius ad Vegetium, lib. 2. cap. 21.*

he were to be *datus in deteriorem militiam*, then he was ſunk to the Condition of a private Soldier. But when we read of any one ſimply *gradu dejectus*, it is to be underſtood of One Degree only: And this is the Diſgrace which by * *Modeſtinus* is called *Gradu militiæ dejici*, and *Gradu pelli*, and by † *Calliſtratus*, *In deteriorem militiam dari*. From which kind of Degradation, *Militiæ mutatio* ſeems in ſome meaſure to differ, by theſe Paſſages in the *Digeſt*; ‡ *Qui in pace deſeruit, Eques gradu pellendus eſt, & Pedes militiam mutat*: For here

* *Digeſt. lib.* 49. *Tit.* 16. *De Re Milit. Leg.*3. §. 5. & 9.

† *Digeſt. lib.* 48. *Tit.* 3. *De Cuſtod. Reorum, Leg.*12.

‡ *Digeſt. lib.* 49. *Tit.* 16. *De Re Milit. Leg.* 5. §. 1.

the

the *Horſeman* is to be reduced *to ſerve on Foot*, and the *Foot-Soldier* to *ſerve among the Slingers*; of which there are many Examples in * Hiſtory. But *Militiâ rejici* was different from all theſe. This was, *When a Soldier had his Pay taken from him, and was adjudged incapable of ever ſerving in the* Army; A † *Puniſhment aſſigned for thoſe that wounded their* Fellow-Soldiers *by ſlinging of Stones.* In which ſenſe, the Law *Qui aliena arma ſubripuit, gradu militiæ pellendus*

* *Valer. Max. lib.* 2. *cap.* 17.
Equites quartæ ſagittariorum cohortis omnes contruſit ad infimum militiæ gradum. *Ammianus Marcellinus, lib.* 29.

† Si quis commilitonem vulneraverit ſiquidem lapide, militiâ rejicitur. *Digeſt. Lib.* 49. *Tit.* 16. *De Re Militari, Leg.* 5. §. 1.
Digeſt. eod. Leg. 3. §. 14.

eſt,

eſt, is likewiſe to be taken; where *Pellendus* goes farther than removing the Offender from one degree to another, and ſignifies the baniſhing of him for ever out of the Service. To this Puniſhment of *Degradation*, there was ſometimes the Additional Diſgrace of having their *Spears* firſt * *broken*, or *taken from them*; A Mark, ſays † *Feſtus*, of the greateſt Infamy, and generally ſet upon Cowardly Slothful Fellows: For the *Spear* was an Emblem of ‡ *Fortitude*, as well as *Command*; and therefore the

* *Ammianus Marcellinus, lib.* 25. *cap.* 1.

† *Feſtus in verbo* CENSIO.

‡ *Budæus.*

Romans

Romans added * *Spears* to all the Statues of their *Emperours* and Great Men. This taking away of the Spear, is the *Censio Hastaria* so often met with in the *Roman* History.

* *G. Cuperus Apoth. Hom. p.* 22. & 23.

CHAP.



CHAP. XVII.

THE *Roman* Soldiers, in the Infancy of that State, had no Pay or Subſiſtence allow'd them by the Publick; Every Man ſupported himſelf in the War, and carried on the Duties of it at his own private Charge, till the Year 350, *ab U. C.* or thereabouts; when the *Senate* decreed, that the *Army* ſhould be *paid* by the

* *Go-*

* *Government*, that is, the *Infantry*; For the *Cavalry*, as some think, had no Pay given them till three Years after †. The Quantity, according to *Polybius*, was a third Part of a *Drachma*, or *seven Pence Halfpeny* a day for every Foot-Soldier; which the same Author in another Place makes equivalent to four *Asses*; To a *Centurion* twice as much, and to a *Horseman* or *Trooper* a *Drachma* or *Roman Denarius*, then current for Twelve *Asses*; which Pay continued, probably, in those Proportions till *Julius Cæsar* doubled it

* Anno Urbis conditæ 349, decrevit Senatus, ut stipendium Miles de publico acciperet, cùm ante id tempus de suo quisque functus eo munere esset. *Liv. lib.* 4.

† *See Sir* H. Savill's *Notes upon* Tacitus.

to the * *Legions* for ever; and after him, *Auguſtus* raiſed the Foot-Soldiers Pay to *Ten Aſſes*, and at length to a whole *Denarius*. When this Pay or Stipend was *ſtopp'd* for any ſhameful Action, it was called † *Æs Reſignatum*; but when it was *wholly taken away* for a Crime committed, then it was called *Æs dirutum*; and ſuch as were puniſhed after that manner, were ſaid to be ‡ *Ære diruti*, and *Infrequentes*, as if they had been *reſpited* upon the *Muſter-Rolls*; in which latter caſe, the Money returned to the Exchequer.

* Legionibus ſtipendium in perpetuum duplicavit. *Sueton. in Julio, cap.* 26.

† *Feſtus in V. Reſignatum.*

VARRO d. Vit. P. R. l. 3. *in fragm.*

‡ Thus

* Thus, if a Soldier happen'd to be taken by the Enemy, and afterwards came back to the Army, he had no right to demand his Stipend for the time of his Absence, unless it appeared his Captivity was no ways owing to his own ill Conduct: For then it could not be refused. Sometimes *their Pay, by way of Punishment, was reduced to one half*; or, when they had compleated their Term of Military Service, they were *put back so many*

* Stipendia & Donativa temporis quo apud hostes fuisse te dicis, restitui tibi postliminio regresso restitutoque jure non desideras. *Cod. lib.* 12. *Tit.* 36. *De Re Milit. Leg.* 1.

Sed si ex improviso dum iter quis facit capitur ab hostibus, inspecto vitæ ejus præcedentis actu venia ei dabitur. *Dig. lib.* 49. *Tit.* 16. *De Re Militari, Leg.* 3. §. 12.

Years, and forced to ſerve them over again †; as the Senate puniſhed the Remains of the Army after the Battle of *Cannæ*.

Over and above their Pay, they had * *Wheat diſtributed among them*, and that long before they began to receive Wages: Sometimes they had *Bacon*, *Pork*, *Salt* and *Pulſe* given them. This Allowance of *Wheat*, *&c.* was for a *Month*, or a *certain Number of Days*, according to the time the Expedition was like to continue. Thus ‡ *Livy*: *The Army was brought back to* Rome,

† Mitterentur in Siciliam ad Cannenſis exercitus reliquias cui militum generi non priuſquam pulſus Italiâ hoſtis finitum tempus ſtipendiorum erat. *Liv. lib.* 33.

* *Schelius ad Hyginum & Polybium, cap.* 7.

‡ Exercitum Romam deductum, ſtipendium & trium menſium frumentum accepiſſe. *Liv. lib.* 8. *in princip.*

having

having received a Years Pay, and Wheat for three Months. But such as were convicted of Crimes, or had failed in their Duty, *instead of Wheat*, had * *Barley* given them, as if they were fitter to be reckoned among *Beasts* than *Men*; In which manner *Marcellus* order'd those Cohorts to be punished, that had *lost their Ensigns* in the Battel with *Hannibal* near *Canusium*. And *Augustus* (as hath been already observed) set this Mark of Disgrace upon some Legions that had given ground to the Enemy. † *Vegetius* says, it was a

* *Livius, lib.* 27.
Suetonius, cap. 24. *in Aug.*

† Ita autem severè apud majores exercitii disciplina servata est, ut & doctores armorum duplicibus remunerentur annonis & milites qui parùm in illâ prolusione profecerant, pro frumento hordeum cogerentur accipere. *Veget. lib.* 1. *cap.* 13.

Pu-

Puniſhment inflicted upon ſuch as *neglected*, or *did not improve in their Military Exerciſes.* It was alſo appointed for thoſe that eſcaped with Life upon Decimation.

This *ſtipendii privatio*, *ſtopping* or *ſuſpending of Pay*, was different from the Puniſhment called *Pœna pecuniaria*, or, as it is frequently and plainly in the *Theodoſian Code*, *Condemnatio*, whereby the Offenders did not only loſe *all their Pay*, but *whatever they were worth beſides.* There is a Law in that *Code*, which enacts, * *That if a Soldier be twice convicted of ſtragling about the Countrey, or abſenting without*

* *Cod. Theod. De Re Militari, Leg.* 21.

leave

leave from the Company he belongs to, he ſhall forfeit all he hath, * In the Free State, ſuch as refuſed to appear at the General Muſter, were puniſh'd with the Loſs of all their Goods. But this *Mulct* or *Pecuniary Puniſhment* grew more Common in *latter Times*, as appears by ſeveral of the Emperours *Conſtitutions.* There is One againſt Petitioners for Leave to hold Two Employments, † *condemning them to pay ten Pounds of Gold*; and Another in favour of the Officers appointed to gather Corn and Money from the Provinces for

* Eos qui non parebant, in bonis damno afficiebant. *Dion. Halicarn. lib.* 8. *interprete Lipſio.*

† *L.* 5. *Cod. Qui milit. poſſ.*

the

the Uſe of the Army, whereby *ſuch as diſturb or hinder them in their Collections, are condemned to pay a hundred Pounds of Gold.*

To conclude: Theſe were the moſt uſual *Roman Military Puniſhments*, for which we have any good Hiſtorical Authority. * *Stewechius* indeed, puts the *Refuſal* of *Burial* in the Catalogue; becauſe thoſe Soldiers who rebelled and ſeiz'd upon † *Rhegium*, were, after the taking of that Place, ſentenced to death, and Orders given that no Man ſhould *bury* or *bewail* them. But this uncommon Reſentment was owing to the extraordinary nature of their

* *Ad Veget. lib.* 3. *cap.* 4.

† *Valer. Max. lib.* 2. *cap.* 7.

Of-

Offence. They suffered as *Rebels* and *Traytors*, not as *Soldiers*, whose Bodies after undergoing the Severity of the Law, were never refused *Burial*. * *Herman Hugo* likewise mentions the *Pugillarium Traditionem*, as a *Roman* Military Punishment in the Horse-Service. This was, the Delivery of a *Pocket-Book* or *Paper*, wherein the Person's Faults were set down, to let him see his Actions were taken notice of and disliked by his Superiours. *Sichterman* blames *Hugo* for calling this a *Military Punishmeut*, and says, he misunderstands *Suetonius*'s Words, and that *Augustus*, who took this method to admonish the *Roman Knights*, did not apply it to them as *military Men*, but as *Brokers* and *Usurers*. But if *Suetonius* be allow'd

* *De Milit. Equestr. lib.* 5.

to ſpeak for himſelf, it will appear, not *Hugo*, but *Sichterman* is miſtaken in this Particular. The Author's Words are, * *Leniſſimum genus admonitionis fuit traditio coram pugillarium.* And then he goes on, *Notavitque aliquos quod pecunias, &c.* From whence 'tis plain, the *Traditio pugillarium* and the *Notatio* were diſtinct Animadverſions, and that the latter only related to thoſe who were accuſed of borrowing Money at a low rate, and lending out the ſame at exorbitant Intereſt: So that both theſe Authors ſeem to be in an Errour; *Hugo*, in applying the Emperours *Notatio* to the *Roman* Knights in their Military Capacity, and † *Sichterman*, in applying the *Pugillarium traditio* to them as Uſurers. Whether

* *In Vitâ Aug. cap.* 39.

† *Diſſert. de Pœn. Milit. ad fin.*

either,

either, considering all things, can, be properly called a *Military Punishment*, is left to the Determination of better Judges. * *Montfaulcon* says, that *striking their Faces with Stones* was likewise a *Military Punishment* in use among the *Romans*; but does not tell us his Authority. And † *Livy* relates, that *Gracchus* made some of his Soldiers who had not behaved themselves with the same Bravery as the rest of the Army, take an Oath, *that they would not eat or drink in any Posture but standing, as long as they should continue in the Service.* But this one Example, in which there appears to be more of Humour than Reason, can't be thought sufficient to place it among the *Military Punishments.* I forbear mentioning several others of the same kind, that I may not seem rather to perplex than illustrate the Subject of this Treatise.

* *Antiq. lib.* 4. † *Lib.* 24.

The E N D.